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(TRANSPORT COMMISSIONERS FOR CANADA)

Judgments, Orders, Regulations and Rulings

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The Board of Transport Commissioners for Canada

Judgments, Orders, Regulations and Rulings

Vol. XXXIV

OTTAWA, APRIL 1, 1944

No. 1

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ORDER No. 64546

In the matter of Agreed Charge between the Canadian National Railways, Canadian Pacific Railway Company, Northern Alberta Railways Company and certain shippers covering transportation of lumber and forest products between stations in Western Canada, specified therein, approved by Order No. 59787, dated October 18, 1940.

File No. 40994.13

FRIDAY, the 3rd day of March, A.D. 1944.

J. A. CROSS, K.C., *Chief Commissioner.*
HUGH WARDROPE, *Asst. Chief Commissioner.*
G. A. STONE, *Commissioner.*
F. M. MACPHERSON, *Commissioner.*

Whereas the Deering Lumber Company Limited, of Winnipeg, Manitoba, has made application under subsection (6) of Section 35 of The Transport Act, 1938, and represented to the Board that its business will be unjustly discriminated against unless a similar charge be fixed for the transport of its lumber and forest products, and has expressed its willingness to meet and comply with the provisions and conditions of the said Agreed Charge—

It is ordered: That the agreed charges approved by the said Order No. 59787, dated October 18, 1940, be, and they are hereby, fixed for the transport by the said railways of lumber and forest products, as described in paragraph B of the said Agreed Charge, for the Deering Lumber Company Limited from Greenbush, Saskatchewan, to the stations referred to in paragraph C (2) of the said Agreed Charge, subject to and upon the terms and conditions contained in the said Agreed Charge; and the Board hereby appoints the date of this Order as the date on which the said charges fixed as aforesaid are to come into operation.

J. A. CROSS,
Chief Commissioner.



ORDER No. 64545

In the matter of the application of W. M. Matthews, Agent, hereinafter called the "Applicant", for and on behalf of carriers, for permission to amend item 52 of his Tariff C.T.C. No. 1367, applying on smokeless powder, carloads, from Depot Harbour, Ontario, to Transcona and Winnipeg, Manitoba, by adding thereto Nobel, Ontario, as a shipping point at the same rate of 222 cents per 100 pounds, minimum 40,000 pounds.

File No. 27612.291

SATURDAY, the 4th day of March, A.D. 1944.

J. A. CROSS, K.C., *Chief Commissioner.*HUGH WARDROPE, *Asst. Chief Commissioner.*

Whereas the Applicant advises that shipments are ready to move account war purposes—

It is ordered: That the Applicant be, and he is hereby, permitted to amend his Tariff C.T.C. No. 1367 as aforesaid, effective March 6, 1944.

J. A. CROSS,
Chief Commissioner.

ORDER No. 64554

In the matter of the application of the Canadian Pacific Railway Company for a licence under Section 10 of The Transport Act, 1938.

File No. 42076.24

SATURDAY, the 4th day of March, 1944.

J. A. CROSS, K.C., *Chief Commissioner.*HUGH WARDROPE, *Asst. Chief Commissioner.*G. A. STONE, *Commissioner.*F. M. MACPHERSON, *Commissioner.*

Upon the report and recommendation of the Assistant Director, Traffic Department of the Board—

It is ordered: That Licence Number C.T.C. (W.T.) 103 be issued to the Canadian Pacific Railway Company for the period of one year commencing on the 15th day of January, 1944, licensing the following ships, namely:

<i>Vessel Name</i>	<i>Official Registry No.</i>	<i>Gross Tonnage</i>
<i>Alberta</i>	85765	2,829
<i>Assiniboia</i>	125984	3,880
<i>Athabasca</i>	85764	2,784
<i>Keewatin</i>	125985	3,856
<i>Manitoba</i>	94879	2,616

to transport passengers and/or goods by water between all ports or places in Canada on Lakes Huron (including Georgian Bay) and Superior, and their connecting waters.

J. A. CROSS,
Chief Commissioner.

ORDER No. 64565

In the matter of the application of Sarnia Steamships, Limited, hereinafter called the "Applicant", for a licence under Section 10 of The Transport Act, 1938.

File No. 42076.14

THURSDAY, the 9th day of March, A.D. 1944.

J. A. CROSS, K.C., *Chief Commissioner.*

G. A. STONE, *Commissioner.*

Upon the report and recommendation of the Assistant Director, Traffic Department of the Board—

It is ordered: That Licence Number C.T.C. (W.T.) 104 be issued to the Applicant for the period of one year commencing on the 15th day of January, 1944, licensing the following ships, namely:

<i>Vessel Name</i>	<i>Official Registry No.</i>	<i>Gross Tonnage</i>
<i>Jos. P. Burke</i>	149499	1,926
<i>Chemong</i>	148073	1,902
<i>Drumahoe</i>	148079	1,902
<i>Fairlake</i>	161520	1,940
<i>Fairriver</i>	161524	1,940
<i>Ralph Gilchrist</i>	149493	1,927
<i>C. H. Houson</i>	149494	1,927
<i>Lockwell</i>	161519	1,928
<i>Scott Misener</i>	149475	1,939
<i>John O. McKellar</i>	149495	1,927
<i>Portwell</i>	161517	1,928
<i>Starwell</i>	161518	1,938

to transport goods by water between all ports or places in Canada on Lakes Ontario, Erie, Huron (including Georgian Bay), and Superior, and their connecting waters, including the St. Lawrence River and its tributaries as far seaward as the west end of the Island of Orleans.

J. A. CROSS,
Chief Commissioner.

ORDER No. 64566

In the matter of the application of Colonial Steamships, Limited, hereinafter called the "Applicant", for a licence under Section 10 of The Transport Act, 1938.

File No. 42076.16

THURSDAY, the 9th day of March, A.D. 1944.

J. A. CROSS, K.C., *Chief Commissioner.*

G. A. STONE, *Commissioner.*

Upon the report and recommendation of the Assistant Director, Traffic Department of the Board—

It is ordered: That Licence Number C.T.C. (W.T.) 105 be issued to the Applicant for the period of one year commencing on the 15th day of January, 1944, licensing the following ships, namely:

<i>Vessel Name</i>	<i>Official Registry No.</i>	<i>Gross Tonnage</i>
<i>Bayton</i>	141675	4,176
<i>Easton</i>	132069	1,757
<i>Laketon</i>	137906	4,423
<i>Mathewston</i>	141679	7,403
<i>Royalton</i>	151108	7,164
<i>Yorkton</i>	132060	1,771

to transport goods by water between all ports or places in Canada on Lakes Ontario, Erie, Huron (including Georgian Bay), and Superior, and their connecting waters, including the St. Lawrence River and its tributaries as far seaward as the west end of the Island of Orleans.

J. A. CROSS,
Chief Commissioner.

ORDER No. 64571

In the matter of the application of Northwest Steamships Limited for a licence under Section 10 of The Transport Act, 1938.

File No. 42076.2

FRIDAY, the 10th day of March, A.D. 1944.

J. A. CROSS, K.C., *Chief Commissioner.*
G. A. STONE, *Commissioner.*

Upon the recommendation of the Assistant Director, Traffic Department of the Board—

It is ordered: That Licence Number C.T.C. (W.T.) 106 be issued to Northwest Steamships Limited for the period of one year commencing on the 15th day of January, 1944, licensing the following ships, namely:

<i>Vessel Name</i>	<i>Official Registry No.</i>	<i>Gross Tonnage</i>
<i>A. A. Hudson</i>	148089	2,222
<i>Superior</i>	154471	1,774

to transport goods by water between all ports or places in Canada on Lakes Ontario, Erie, Huron (including Georgian Bay), and Superior, and their connecting waters, including the St. Lawrence River and its tributaries as far seaward as the west end of the Island of Orleans.

J. A. CROSS,
Chief Commissioner.

ORDER No. 64573

In the matter of the application of Arrow Airways Limited, hereinafter called the "Applicant", under Section 13 of The Transport Act, 1938, for a licence to transport by air passengers and/or goods between The Pas, Manitoba, Sturgeon Landing and Cumnerland House, Saskatchewan.

File No. 42007.6.1

FRIDAY, the 10th day of March, A.D. 1944.

J. A. CROSS, K.C., *Chief Commissioner.*
G. A. STONE, *Commissioner.*
F. M. MACPHERSON, *Commissioner.*

Whereas, in pursuance of Order No. 63243, dated February 9, 1943, a licence was issued to the Applicant in renewal of Licence Number C.T.C. (A.T.) 11 for the period of one year from March 31, 1943—

Therefore it is ordered: That a licence be issued to the Applicant for the period of one year commencing on March 31, 1944, in renewal of the said Licence Number C.T.C. (A.T.) 11.

J. A. CROSS,
Chief Commissioner.

ORDER No. 64574

In the matter of the application of Arrow Airways Limited, hereinafter called the "Applicant", under Section 13 of The Transport Act, 1938, for a licence to transport by air Passengers and/or goods between Flin Flon, Cranberry Portage, Gurney Gold, Elbow Lake, Sherridon, and Pukatawagan, in the Province of Manitoba.

File No. 42007.6.3

FRIDAY, the 10th day of March, A.D. 1944.

J. A. CROSS, K.C., *Chief Commissioner.*

G. A. STONE, *Commissioner.*

F. M. MACPHERSON, *Commissioner.*

Whereas, in pursuance of Order No. 63244, dated February 9, 1943, a licence was issued to the Applicant in renewal of Licence Number C.T.C. (A.T.) 12 for the period of one year from March 31, 1943—

Therefore it is ordered: That a licence be issued to the Applicant for the period of one year commencing on March 31, 1944, in renewal of the said Licence Number C.T.C. (A.T.) 12.

J. A. CROSS,

Chief Commissioner.

ORDER No. 64575

In the matter of the application of the M & C Aviation Company Limited, hereinafter called the "Applicant", under Section 13 of The Transport Act, 1938, for a licence to transport passengers and/or goods by air between Big River, Meadow Lake, Dore Lake, La Plonge/Beauval, Ile a la Crosse, Pine River, Clear Lake, Buffalo River, Buffalo Narrows, Lac la Loche, in the Province of Saskatchewan.

File No. 42007.9

FRIDAY, the 10th day of March, A.D. 1944.

J. A. CROSS, K.C., *Chief Commissioner.*

G. A. STONE, *Commissioner.*

F. M. MACPHERSON, *Commissioner.*

Whereas, in pursuance of Order No. 63260, dated February 15, 1943, a licence was issued to the Applicant in renewal of Licence Number C.T.C. (A.T.) 14 for the period of one year from March 31, 1943—

Therefore it is ordered: That a licence be issued to the Applicant for the period of one year commencing on March 31, 1944, in renewal of the said Licence Number C.T.C. (A.T.) 14.

J. A. CROSS,

Chief Commissioner.

ORDER No. 64585

In the matter of the application of the Abitibi Navigation Company, Limited, hereinafter called the "Applicant", for a licence under Section 10 of The Transport Act, 1938.

File No. 42076.18

TUESDAY, the 14th day of March, A.D. 1944.

J. A. CROSS, K.C., *Chief Commissioner.*

HUGH WARDROPE, *Assistant Chief Commissioner.*

G. A. STONE, *Commissioner.*

F. M. MACPHERSON, *Commissioner.*

Upon the report and recommendation of the Assistant Director, Traffic Department of the Board—

It is ordered: That Licence Number C.T.C. (W.T.) 107 be issued to the Applicant for the period of one year commencing on the 15th day of January, 1944, licensing the following ship:—

<i>Vessel Name</i>	<i>Official Registry No.</i>	<i>Gross Tonnage</i>
<i>Wahcondah</i>	<i>102577</i>	<i>1,575</i>

to transport goods by water between all ports or places in Canada on Lakes Ontario, Erie, Huron (including Georgian Bay), and Superior, and their connecting waters, including the St. Lawrence River and its tributaries as far seaward as the west end of the Island of Orleans.

J. A. CROSS,

Chief Commissioner.

GENERAL ORDER No. 659

In the matter of the application of The Express Traffic Association of Canada for permission to ship by express R.C.A.F. smoke-producing chemical cartridges for practice bombs, between points in Canada.

File No. 1717.12.77

FRIDAY, the 3rd day of March, A.D. 1944.

J. A. CROSS, K.C., *Chief Commissioner.*

HUGH WARDROPE, *Assistant Chief Commissioner.*

G. A. STONE, *Commissioner.*

F. M. MACPHERSON, *Commissioner.*

Upon the recommendation of the Director of Operation of the Board—

It is ordered that the Regulations for the Transportation by Express of Acids, Inflammables, Oxidizing Substances, Samples of Explosives, etc., be, and they are hereby, amended by adding to paragraph (i) of Rule No. 4 (Group 1), as amended by General Order No. 636, dated the 12th day of January, 1943, the following proviso:—

"Provided, however, that during the present emergency and until further Order of The Board of Transport Commissioners for Canada, movement may be made by railway express of shipments of smoke-producing chemical cartridges for practice bombs—R.C.A.F. Ref. 12D/204 and Ref. 12D/205, between points in Canada, consigned by, for or to the Department of National Defence for Air, subject to and upon the following conditions:

- (1) They must be packed in metal-lined wooden service box 'C1', packed seventy-five (75) cartridges per box.
- (2) Maximum gross weight of any one shipment of such cartridges shall not exceed 5,000 pounds in one train.
- (3) Each outside package must be plainly marked in letters not less than seven-sixteenths inch in height, 'FIREWORKS—HANDLE CAREFULLY—KEEP FIRE AWAY'.
- (4) Each outside package must have securely and conspicuously attached the square RED LABEL CERTIFICATE FOR FIREWORKS prescribed in the Board's Regulations: Provided that in cases where loading and unloading of shipments is performed by personnel of the Department of National Defence, labelling of packages is not required.
- (5) Shipments loaded into an express car occupied by an express company's employee must be so loaded that they will not fall or be damaged by other shipments, and must not be loaded against heater pipes or other sources of heat. No placards are required on car while occupied by an express company's employee.
- (6) Shipments loaded into a sealed express car, or a car not occupied by an express company's employee, must be securely blocked and braced in the car. They must not be loaded near heater pipes or other sources of heat, and the heating system must be shut off the car.
- (7) Sealed cars must be placarded with the DANGEROUS placard.
- (8) Shipments shall not be loaded in a railway express car which is a part of a passenger car."

J. A. CROSS,

Chief Commissioner.

SUMMARY OF ORDERS ISSUED BY THE BOARD

- 64544 Mar. 3—Declaring C.P.R. crossing at Mileage 170·31 Willingdon Subd., Alta., protected to Board's satisfaction.
- 64545 Mar. 4—Authorizing W. M. Matthews to amend his Tariff C.T.C. No. 1367, effective March 6, 1944.
- 64546 Mar. 3—Approving agreed charges for the transport of lumber and forest products for the Deering Lumber Company Ltd.
- 64547 Mar. 3—Declaring C.N.R. crossing, mileage 61·54 Chatham Subd. protected to Board's satisfaction.
- 64548 Mar. 6—Authorizing Commissioner George A. Stone, in the absence of the Chief Commissioner, to sign regulations, etc.
- 64549 Mar. 4—Authorizing the C.P.R. to use and operate the bridge at mileage 48·71 Cartier Subd., Ont.
- 64550 Mar. 4—Approving and authorizing clearances at C.N. Rys. siding serving the Chesley Chair Co. Ltd., Chesley, Ont.
- 64551 Mar. 4—Declaring the Pere Marquette Railway crossing just west of Coatsworth Station, Ont., protected to Board's satisfaction.
- 64552 Mar. 4—Declaring New York Central Railroad crossing second east of Pelton, Ont., protected to Board's satisfaction.
- 64553 Mar. 4—Approving tolls published in Supplement No. 7 to Tariff C.T.C. No. 1151, filed by Dominion Atlantic Railway Co. under Section 9 of Maritime Freight Rates Act.
- 64554 Mar. 4—Authorizing issuing of Licence No. C.T.C. (W.T.) 103 to the C.P.R. to transport passengers and/or goods by water on Lakes Huron and Superior.
- 64555 Mar. 6—Declaring Nipissing Central Railway crossing at mileage 6·31 Kirkland Lake Subd., protected to Board's satisfaction.
- 64556 Mar. 6—Approving plan showing replacement of gates at the crossing of Walker Road by C.N.R. and Pere Marquette Railways, Windsor, Ont.
- 64557 Mar. 6—Authorizing C.P.R. and the Toronto Transportation Commission to operate their trains and street cars through interlocking plant at crossings of Front Street and Spadina Ave., Toronto, Ont.
- 64558 Mar. 8—Declaring C.N.R. crossing of Haig Ave., Montreal, protected to Board's satisfaction; present speed limitation of ten miles per hour to be maintained.
- 64559 Mar. 9—Extending time in which flashing light signals and bell are to be installed at crossing of C.N. Rys. at mileage 74·85 Chester Subd., N.S.
- 64560 Mar. 6—Approving plan showing changes in track circuits at crossing of George St., Sydney, N.S. (C.N.R.).
- 64561 Mar. 6—Declaring C.P.R. crossing, first east of Viceroy Station, Sask., protected to Board's satisfaction.
- 64562 Mar. 6—Approving plan showing changes in track circuits at crossing of King's Road, Sydney, N.S. (C.N.R.).
- 64563 Mar. 6—Approving plan showing changes in track circuits at crossing of South Bentinck St., Sydney, N.S. (C.N.R.).
- 64564 Mar. 9—Declaring C.P.R. crossing at West Saint John, N.B., mileage 3·4 West Saint John Subd., protected to Board's satisfaction.
- 64565 Mar. 9—Authorizing issuing of Licence No. C.T.C. (W.T.) 104 to the Sarnia Steamships Limited, to transport goods by water.
- 64566 Mar. 9—Authorizing issuing of Licence No. C.T.C. (W.T.) 105 to the Colonial Steamships Limited, to transport goods by water.
- 64567 Mar. 9—Declaring C.N.R. crossing of Bruce St., near Thornbury, Ont., protected to Board's satisfaction; present speed limitation of ten miles per hour to be maintained.
- 64568 Mar. 10—Relieving C.P.R. from erecting and maintaining cattle guards at certain crossing on its St. Gabriel Subd., Que.
- 64569 Mar. 10—Declaring C.P.R. crossing 2·70 miles east of Thamesville, Ont., protected to Board's satisfaction.
- 64570 Mar. 10—Declaring C.P.R. crossing just south of Pinder Station, N.B., protected to Board's satisfaction.
- 64571 Mar. 10—Authorizing issuing of Licence No. C.T.C. (W.T.) 106 to Northwest Steamships Limited to transport goods by water.
- 64572 Mar. 10—Approving toll published in Supplement No. 26 to Tariff C.T.C. No. E.4316 filed by the C.P.R. under Sec. 9 of the Maritime Freight Rates Act.

- 64573 Mar. 10—Authorizing issuing of Licence to Arrow Airways Ltd. in renewal of Licence No. C.T.C. (A.T.) 11.
- 64574 Mar. 10—Authorizing issuing of Licence to Arrow Airways Ltd. in renewal of Licence C.T.C. (A.T.) 12.
- 64575 Mar. 10—Authorizing issuing of Licence to M. & C. Aviation Company Limited in renewal of Licence C.T.C. (A.T.) 14.
- 64576 Mar. 11—Relieving the C.P.R. from erecting and maintaining cattle guards at highway crossing mileage 75·3 Trois Rivières Subd., Que.
- 64577 Mar. 11—Relieving the C.P.R. from erecting and maintaining cattle guards at highway crossing mileage 75·3 Ste. Agathe Subd., Que.
- 64578 Mar. 11—Declaring C.N.R. crossing first west of Smoky Lake Station, Alta, protected to Board's satisfaction.
- 64579 Mar. 11—Authorizing the C.N.R. to reconstruct bridge over the Welland River at mileage 10·23 Welland Subd., Ont.
- 64580 Mar. 11—Dismissing application to close Highgate Station, Ont. (New York Central System).
- 64581 Mar. 13—Approving tolls published in tariffs filed by the C.N.R. under Sec. 3 of the Maritime Freight Rates Act.
- 64582 Mar. 13—Authorizing Dept. of Public Works of Alta. to construct highway crossing over C.N.R. at mileage 4·0 Drumheller Subd., Alta.
- 64583 Mar. 14—Approving plan dated January 25/44 showing changes to interlocking plant at crossing of C.N.Rys. and C.P.R. at Norcran, Man.
- 64584 Mar. 14—Authorizing New York Central Railroad Co. to operate its passenger trains over crossing with the Toronto, Hamilton & Buffalo Railway near Diltz, Ont.
- 64585 Mar. 14—Authorizing issuing of licence Number C.T.C. (W.T.) 107 to Abitibi Navigation Co., Ltd., licensing ships to transport goods by water.
- 64586 Mar. 13—Declaring C.N.R. crossing just west of Trois Pistoles station, Que., protected to Board's satisfaction.
- 64587 Mar. 15—Approving Supplements to Traffic Agreements between the Bell Telephone Co. and a number of other independent Telephone Companies.
- 64588 Mar. 13—Directing C.P.R. to install two flashing lights and one bell at crossing of highway three-quarters of a mile west of Pendleton Station, Ont.
- 64589 Mar. 15—Authorizing C.P.R. to close road allowance between Secs. 10 and 15, Twp. 20, Rge. 12, W.4.M., Alta.
- 64590 Cancelled.
- 64591 Mar. 15—Authorizing C.P.R. to operate their trains through the interlocking plant at mileage 13·89 of C.N.Rys. Harte Subd., West Winnipeg, Man.
- 64592 Mar. 16—Declaring C.N.R. crossing of Shellbrook Trail, fourth crossing west of Holbein, Sask., protected to Board's satisfaction.
- 64593 Mar. 16—Authorizing Pere Marquette Railway Co. and the New York Central Railroad Co. to operate their trains through interlocking plant at Pelton, Ont.
- 64594 Mar. 16—Declaring C.P.R. crossing of Jane Street, Twp. of York, Ont., protected to Board's satisfaction.
- 64595 Mar. 17—Approving proposed location of unloading rack, pipe lines, etc., of Imperial Oil Ltd. near tracks of C.N.R. at Ste. Thécle, Que.
- 64596 Mar. 17—Approving proposed construction by Imperial Oil Ltd. of five pipe lines under tracks of C.N.R. at Montreal East, Que.
- 64597 Mar. 9—Relieving C.P.R. from erecting cattle guards at highway crossings, mileage 39·89 and 40·79 Ste. Agathe Subd., Que.
- 64598 Mar. 17—Declaring C.P.R. crossing east of Bonny River bridge, N.B., mileage 47·83 protected to Board's satisfaction.
- 64599 Mar. 17—Approving proposed location of one additional vertical storage tank, etc., of Imperial Oil Ltd. near tracks of C.P.R. at Denzil, Sask.
- 64600 Mar. 17—Declaring C.N.R. crossing of Smyth Street, Fredericton, N.B., protected to Board's satisfaction; present speed limitation of ten miles per hour to be maintained.
- 64601 Mar. 17—Authorizing Saguenay Railway Co. to connect its temporary track with the tracks of the C.N.R. at Arvida, Que.
- 64602 Mar. 20—Declaring Lake Erie & Northern Railway crossing of Morrell Street, Brantford, protected to satisfaction of Board; speed limitation of ten miles per hour to be maintained.

- 64603. Mar. 20—Declaring C.N.R. crossing just north of Ste. Monique Station, Que., protected to Board's satisfaction.
- 64604. Mar. 20—Approving agreements made between the C.P.R. and the Postal Telegraph-Cable Company.
- 64605. Mar. 20—Approving agreements made between the C.P.R. and the Western Union Telegraph Co. and the C.N.R. Co.
- 64606. Mar. 20—Approving agreements made between the C.P.R. and the Manitoulin and North Shore Telephone and Telegraph Co. Ltd.
- 64607. Mar. 20—Approving agreements made between C.P.R. Co. and the North American Telegraph Company.
- 64608. Mar. 20—Approving agreements made between C.P.R. Co. and The Temiskaming and Northern Ontario Ry. Commission, Nipissing Central Ry. Co., the Great North Western Telegraph Co. of Canada and the Canadian National Telegraph Co.
- 64609. Mar. 20—Approving agreements made between the C.P.R. Co. and the Manitoba Telephone System.
- 64610. Mar. 21—Approving tolls published in Tariff C.T.C. No. E.1231 filed by the C.N.R. under Sec. 3 of the Maritime Freight Rates Act.
- 64611. Mar. 21—Extending time within which flashing light signals and bell are to be installed at crossing of King St., Thorndale, Ont. (C.N.R.).

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The Board of

Transport Commissioners for Canada

Judgments, Orders, Regulations and Rulings

Vol. XXXIV

Ottawa, April 15, 1944

No. 2

This publication is issued fortnightly, on the 1st and 15th of each month. Annual subscription, \$3.00; single numbers, 20 cents; in quantities, 25 per cent discount. Remittances should be made to the King's Printer, Ottawa, by postal money order, express order or accepted cheque. The use of currency for this purpose is contrary to the advice of the postal authorities and entails a measure of risk. Postage stamps, foreign money or uncertified cheques will not be accepted. No extra charge is made for postage on documents forwarded to points in Canada and in the United States, but cost of postage is added to the selling price when documents are mailed to other countries. Early application should be made for copies in quantities. Subscriptions should be sent, in every case, to the King's Printer, Ottawa.

ORDER No. 64618

In the matter of the application of Arrow Airways Limited, under Section 21 of The Transport Act, 1938, for approval of Standard Passenger and Goods Tariffs, C.T.C. Nos. 18 and 19 respectively, on file with the Board under file No. 42017.6.

File No. 42017.6

WEDNESDAY, the 22nd day of March, A.D. 1944.

J. A. CROSS, K.C., *Chief Commissioner.*

HUGH WARDROPE, *Asst. Chief Commissioner.*

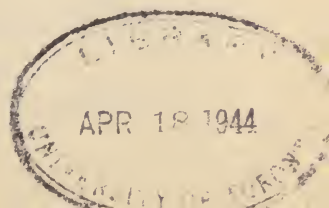
G. A. STONE, *Commissioner.*

F. M. MACPHERSON, *Commissioner.*

Upon the report and recommendation of the Assistant Director of the Traffic Department of the Board—

It is ordered: That the said Standard Air Passenger Tariff C.T.C., No. 18 and Standard Air Goods Tariff C.T.C. No. 19 of Arrow Airways Limited, on file with the Board under file No. 42017.6, be, and they are hereby, approved.

J. A. CROSS,
Chief Commissioner.



ORDER No. 64619

In the matter of the application of Northwest Airlines Inc., hereinafter called the "Applicant," under Section 13 of The Transport Act, 1938, for a licence to transport by air passengers and/or goods between Winnipeg, Manitoba, and Grand Forks and Fargo, North Dakota.

File No. 42007.15

WEDNESDAY, the 22nd day of March, A.D. 1944.

J. A. CROSS, K.C., *Chief Commissioner.*HUGH WARDROPE, *Asst. Chief Commissioner.*G. A. STONE, *Commissioner.*F. M. MACPHERSON, *Commissioner.*

Whereas, in pursuance of Order No. 63343, dated March 12, 1943, a licence was issued to the Applicant in renewal of Licence Number C.T.C. (A.T.) 10 for the period of one year commencing on April 1, 1943—

Therefore it is ordered: That a licence be issued to the Applicant for the period of one year commencing on April 1, 1944, in renewal of the said Licence Number C.T.C. (A.T.) 10.

J. A. CROSS,

Chief Commissioner.

ORDER No. 64612

In the matter of the application of the Canadian Pacific Railway Company, hereinafter called the "Applicant Company," for permission to amend its Tariffs C.T.C. Nos. E.4533, 4939, 4872, 4943, 4996, 4429 and 4711 on short notice.

File No. 27612.292

THURSDAY, the 23rd day of March, A.D. 1944.

J. A. CROSS, K.C., *Chief Commissioner.*HUGH WARDROPE, *Asst. Chief Commissioner.*G. A. STONE, *Commissioner.*

Whereas, by Service Order No. 187, the Interstate Commerce Commission has prohibited the use of refrigerator cars for the movement of potatoes, effective March 20, 1944;

And whereas the Applicant Company desires to suspend the operation of all rules, regulations or charges contained in the tariffs above mentioned in so far as they conflict with the provisions of this Order—

It is ordered: That the Applicant Company be, and it is hereby, permitted to amend the said tariffs as aforesaid, effective on one day's notice.

J. A. CROSS,

Chief Commissioner.

ORDER No. 64625

In the matter of the application of Upper Lakes and St. Lawrence Transportation Co. Limited, hereinafter called the "Applicant," for a licence under Section 10 of The Transport Act, 1938.

File No. 42076.22

THURSDAY, the 23rd day of March, A.D. 1944.

J. A. CROSS, K.C., *Chief Commissioner.*

HUGH WARDROPE, *Asst. Chief Commissioner.*

G. A. STONE, *Commissioner.*

F. M. MACPHERSON, *Commissioner.*

Upon the report and recommendation of the Assistant Director of the Traffic Department of the Board—

It is ordered: That Licence Number C.T.C. (W.T.) 108 be issued to the Applicant for the period of one year commencing on the 15th day of January, 1944, licensing the following ships:—

<i>Vessel Name</i>	<i>Official Registry No.</i>	<i>Gross Tonnage</i>
<i>Brown Beaver</i>	160721	1,892
<i>Charles R. Huntley</i>	148898	1,760
<i>Grey Beaver</i>	160722	1,892
<i>James Stewart</i>	148901	1,760
<i>John S. Pillsbury</i>	149071	1,754
<i>Judge Kenefick</i>	148430	1,745
<i>Ralph Budd</i>	154862	4,537
<i>Shelton Weed</i>	148453	1,745

to transport goods by water between all ports or places in Canada on Lakes Ontario, Erie, Huron (including Georgian Bay), and Superior, and their connecting waters, including the St. Lawrence River and its tributaries as far seaward as the west end of the Island of Orleans.

J. A. CROSS,
Chief Commissioner.

ORDER No. 64632

In the matter of the application of the Ontario Car Ferry Co., Limited, for a licence under Section 10 of The Transport Act, 1938.

File No. 42076.30

SATURDAY, the 25th day of March, A.D. 1944.

J. A. CROSS, K.C., *Chief Commissioner.*

HUGH WARDROPE, *Asst. Chief Commissioner.*

G. A. STONE, *Commissioner.*

F. M. MACPHERSON, *Commissioner.*

Upon the report and recommendation of the Assistant Director, Traffic Department of the Board—

It is ordered: That Licence Number C.T.C. (W.T.) 109 be issued to the Ontario Car Ferry Co., Limited, for the period of one year commencing on the 15th day of January, 1944, licensing the following ships, namely:—

<i>Vessel Name</i>	<i>Official Registry No.</i>	<i>Gross Tonnage</i>
<i>Ontario No. 1</i>	125983	5,146
<i>Ontario No. 2</i>	137978	5,568

to transport passengers by water between all ports or places in Canada on Lake Ontario.

J. A. CROSS,
Chief Commissioner.

ORDER No. 64634

In the matter of the application of Canada Steamship Lines Limited and The Northern Navigation Company Limited (a wholly owned subsidiary operated as "Northern Navigation Division"), hereinafter called the "Applicant," for a licence under Section 10 of The Transport Act, 1938.

File No. 42076.4.2

MONDAY, the 27th day of March, A.D, 1944.

J. A. CROSS, K.C., *Chief Commissioner.*

HUGH WARDROPE, *Asst. Chief Commissioner.*

G. A. STONE, *Commissioner.*

F. M. MACPHERSON, *Commissioner.*

Upon the report and recommendation of the Assistant Director, Traffic Department of the Board—

It is ordered: That Licence Number C.T.C. (W.T.) 110 be issued to the Applicant licensing, for the period of one year commencing on the 15th day of January, 1944, the following ships:—

<i>Vessel Name</i>	<i>Official Registry No.</i>	<i>Gross Tonnage</i>
<i>Acadian</i>	133533	1,686
<i>Barrie</i>	151045	1,824
<i>Battleford</i>	148134	2,357
<i>Beaverton</i>	125440	2,012
<i>Calgarian</i>	112205	2,272
<i>Canadian</i>	125427	2,214
<i>City of Hamilton</i>	153423	1,665
<i>City of Kingston</i>	152837	1,690
<i>City of Montreal</i>	153422	1,665
<i>City of Toronto</i>	152838	1,688
<i>City of Windsor</i>	154463	1,905
<i>Edmonton</i>	122856	1,983
<i>Elgin</i>	145518	1,906
<i>Fairmount</i>	68808	1,851
<i>Fernie</i>	154461	2,419
<i>Grainmotor</i>	154473	1,829
<i>Hastings</i>	145533	1,906
<i>Huron</i>	107168	3,330
<i>Kenora</i>	124235	1,979
<i>Kimmount</i>	138187	1,711
<i>Lethbridge</i>	147702	2,407
<i>Mapleheath</i>	129767	1,692
<i>Meaford</i>	151043	1,824
<i>Penetang</i>	151046	1,824
<i>Renvoyle</i>	148133	3,571
<i>Saskatoon</i>	153436	2,412
<i>Selkirk</i>	152859	2,384
<i>Simcoe</i>	145511	1,783
<i>Starmount</i>	145609	1,859
<i>Westmount</i>	138232	7,392
<i>Weyburn</i>	153437	2,408
<i>Winnipeg</i>	152854	2,383

to transport goods by water between all port or places in Canada on Lakes Ontario, Erie, Huron (including Georgian Bay), and Lake Superior, and their connecting waters, including the St. Lawrence River and its tributaries as far seaward as the west end of the Island of Orleans.

J. A. CROSS,
Chief Commissioner.

ORDER No. 64638

In the matter of the application of Canada Steamship Lines Limited and The Northern Navigation Company Limited (a wholly owned subsidiary operated as "Northern Navigation Division") for a licence under Section 10 of The Transport Act, 1938.

File No. 42076.4.1

TUESDAY, the 28th day of March, A.D. 1944.

J. A. CROSS, K.C., *Chief Commissioner.*

HUGH WARDROPE, *Asst. Chief Commissioner.*

G. A. STONE, *Commissioner.*

F. M. MACPHERSON, *Commissioner.*

Upon the recommendation of the Assistant Director, Traffic Department of the Board—

It is ordered: That Licence Number C.T.C. (W.T.) 111 be issued in the name of Canada Steamship Lines Limited and The Northern Navigation Company Limited (a wholly owned subsidiary operated as "Northern Navigation Division"), licensing, for the period of one year commencing on the 15th day of January, 1944, the following ships, namely:—

<i>Vessel Name</i>	<i>Official Registry No.</i>	<i>Gross Tonnage</i>
<i>Cayuga</i>	122219	2,196
<i>Hamonic</i>	122553	5,265
<i>Kingston</i>	111654	2,925
<i>Noronic</i>	134014	6,905
<i>Quebec</i>	153450	7,016
<i>Rapids Prince</i>	130418	1,314
<i>Richelieu</i>	150828	5,528
<i>Saguenay</i>	130526	2,777
<i>St. Lawrence</i>	153438	6,328
<i>Tadoussac</i>	153447	7,013

to transport passengers and/or goods by water between all ports or places in Canada on Lakes Ontario, Erie, Huron (including Georgian Bay), and Superior, and their connecting waters, including the St. Lawrence River and its tributaries as far seaward as the west end of the Island of Orleans.

J. A. CROSS,
Chief Commissioner.

GENERAL ORDER No. 660

In the matter of the application of the Inspection Board of United Kingdom and Canada for an Order amending General Order No. 631, dated October 30, 1942, which permits the handling of samples of cannon-proof rounds for testing purposes of cordite or nitro-cellulose propellant by express between certain points as designated in the Order and under certain conditions.

File 1717.12.3

FRIDAY, the 10th day of March, A.D. 1944.

J. A. CROSS, K.C., *Chief Commissioner.*

G. A. STONE, *Commissioner.*

F. M. MACPHERSON, *Commissioner.*

Upon the recommendation of the Director of Operation of the Board—

It is ordered: That the said General Order No. 631, dated October 30, 1942, as amended by General Orders No. 637 dated January 13, 1943, and No. 642 dated February 19, 1943, be, and it is hereby, further amended by adding the following words after the words, "Cherrier, Quebec, and Saint John, New Brunswick", in paragraph numbered 1 thereof, namely:—

"Transcona, Manitoba, and Ottawa, Ontario
Transcona, Manitoba, and Nobel, Ontario
Transcona, Manitoba, and Pickering, Ontario
Transcona, Manitoba, and Cherrier, Quebec
Winnipeg, Manitoba, and Ottawa, Ontario
Winnipeg, Manitoba, and Nobel, Ontario
Winnipeg, Manitoba, and Pickering, Ontario
Winnipeg, Manitoba, and Cherrier, Quebec."

J. A. CROSS,
Chief Commissioner,

SUMMARY OF ORDERS ISSUED BY THE BOARD

- 64612. Mar. 23—Permitting C.P.R. to amend its Tariffs C.T.C. Nos. E. 4533, 4939, etc., re use of refrigerator cars for movement of potatoes on short notice.
- 64613. Mar. 21—Declaring C.N.R. crossing of Provincial Highway No. 11 at mileage 108.1 Huntsville Subd., protected to Board's satisfaction; speed limitation of ten miles per hour to be maintained.
- 64614. Mar. 21—Declaring C.N.R. crossing east of Princeton Station, Ont., protected to Board's satisfaction.
- 64615. Mar. 21—Dismissing C.N.R. application for an Order to close as an agency their station at Myrtle, Man.
- 64616. Mar. 21—Approving plan showing proposed relocation of fixed arm distant signal at interlocking crossing with B.C. Electric Railway at Chilliwack, B.C.
- 64617. Mar. 22—Declaring C.N.R. crossing of Welland Street, Port Colborne, Ont., protected to Board's satisfaction; speed limitation of ten miles per hour to be maintained.
- 64618. Mar. 22—Approving Standard Passenger and Goods Tariffs, C.T.C. Nos. 18 and 19 of Arrow Airways Ltd.
- 64619. Mar. 22—Authorizing issuance of licence in renewal of Licence Number C.T.C. (A.T.) 10 to Northwest Airlines Inc.
- 64620. Mar. 22—Approving clearances at siding serving Libby, McNeill & Libby of Canada, Ltd., at Chatham, Ont. (C.N.Rys.).
- 64621. Mar. 23—Approving location and details of C.P.R. portable station building at Dunkirk, Sask.
- 64622. Mar. 23—Approving location and details of C.P.R. portable station building at Expanse, Sask.
- 64623. Mar. 23—Declaring C.N.R. crossing about 500 feet north of the diamond crossing at Ha! Ha! Bay Junction, Que., protected to Board's satisfaction.
- 64624. Mar. 24—Declaring Niagara, St. Catharines & Toronto Railway crossing of the Merrittville Highway, mileage 4.86 Welland Subd., protected to Board's satisfaction; speed limitation of ten miles per hour to be maintained.
- 64625. Mar. 23—Authorizing issuing of licence to Upper Lakes and St. Lawrence Transportation Co. Ltd. licensing ships to transport goods by water.
- 64626. Mar. 24—Declaring C.N.R. crossing of Lindsay Street, Drummondville, Que., protected to Board's satisfaction.
- 64627. Mar. 24—Declaring C.P.R. crossing of Mountain Avenue, West Fort William, Ont., protected to Board's satisfaction.
- 64628. Mar. 24—Declaring C.N.R. crossing first south of station at Neepawa, Man., protected to Board's satisfaction.
- 64629. Mar. 24—Declaring C.P.R. crossing 2.51 miles west of Audley, Ont., protected to Board's satisfaction.
- 64630. Mar. 25—Declaring C.N.R. crossing of Waterdown Road east of Aldershot Station, Ont., protected to Board's satisfaction.
- 64631. Mar. 24—Declaring C.N.R. crossing fourth west of Bothwell Ont., protected to Board's satisfaction.
- 64632. Mar. 25—Authorizing issuing of licence to Ontario Car Ferry Co., Limited, licensing ships to transport passengers by water between all ports or places in Canada on Lake Ontario.
- 64633. Mar. 27—Approving under Maritime Freight Rates Act tolls published in Tariff filed by the C.P.R. under Section 9.
- 64634. Mar. 27—Authorizing issuing of licence to Canada Steamship Lines Ltd. and The Northern Navigation Co. Ltd. licensing ships to transport goods by water.
- 64635. Mar. 28—Approving under Maritime Freight Rates Act tolls published in Tariff filed by Dominion Atlantic Railway Co. under Section 9.
- 64636. Mar. 27—Authorizing C.N.R. to make changes in connection with interlocking plant at Laurette, Que.
- 64637. Mar. 27—Declaring C.N.R. crossing of Elma Street, Town of Listowel, Ont., protected to Board's satisfaction; all switching movements over crossing to be flagged by a member of crew.
- 64638. Mar. 28—Authorizing issuing of licence to Canada Steamship Lines Ltd. and The Northern Navigation Co. Ltd. licensing ships to transport passengers and/or goods by water.
- 64639. Mar. 27—Declaring C.P.R. crossing first south of station of Highwater Que., protected to Board's satisfaction.
- 64640. Mar. 27—Relieving C.P.R. from erecting and maintaining cattle guards at highway crossing in Lots 15 and 16, Concession 10, of Twp. of Bonfield Ont.
- 64641. Mar. 28—Approving under Maritime Freight Rates Act tolls published in tariffs filed by the C.N.R. under Section 3.
- 64642. Mar. 28—Authorizing C.N.R. and C.P.R. to operate their trains through interlocker at crossing at mileage 93.13 of C.N.R. Gladstone Subd., Man.
- 64643. Mar. 28—Approving location and details of Dominion Atlantic Railway Company's station at Cornwallis, N.S.

NOTICES, ORDERS IN COUNCIL, ETC.

The following Orders in Council are reproduced for the information of all concerned:—

P.C. 1864

PRIVY COUNCIL

CANADA

AT THE GOVERNMENT HOUSE AT OTTAWA

FRIDAY, the 17th day of March, 1944.

• PRESENT:

HIS EXCELLENCY

THE GOVERNOR IN COUNCIL:

Whereas by Order in Council, P.C. 2595, of April 1, 1943, passed under the provisions of Subsection 2 of Section 12 of The Transport Act, 1938, the steamships *Cyclo-Brave*, *Cyclo-Chief*, and *Cyclo-Warrior*, bulk tankers, which are controlled by McColl-Frontenac Oil Company, Limited, through complete stock ownership, and which are operated on the Great Lakes as in The Transport Act, 1938, defined, were exempted from the operation of Part II of the said Act, relative to Transport by Water, for the season of navigation of 1943, only, when engaged in the carriage of articles or package freight for McColl-Frontenac Oil Company, Limited;

And whereas the Minister of Transport reports that, under date of February 21, 1944, the Board of Transport Commissioners for Canada advised that it is in receipt of a letter from the said Company, setting out that the same conditions will exist this year as are summarized in the said Order in Council, and, in the circumstances, the Board recommends that the exemption in respect of the ships, referred to, be continued for the season of navigation of 1944.

Therefore, His Excellency the Governor General in Council, on the recommendation of the Minister of Transport, is pleased to order that the S.S. *Cyclo-Brave*, the S.S. *Cyclo-Chief* and the S.S. *Cyclo-Warrior* be, and they are hereby exempted from the operation of Part II of The Transport Act, 1938, for the season of navigation of 1944, only, when engaged in the carriage of articles or package freight for McColl-Frontenac Oil Company, Limited.

A. D. P. HEENEY,
Clerk of the Privy Council.

P.C. 1865

PRIVY COUNCIL

CANADA

AT THE GOVERNMENT HOUSE AT OTTAWA

FRIDAY, the 17th day of March, 1944.

PRESENT:

HIS EXCELLENCY

THE GOVERNOR GENERAL IN COUNCIL:

Whereas, by Order in Council, P.C. 2593, of April 1, 1943, passed under the provisions of Subsection 2 of Section 12 of The Transport Act, 1938, the S.S. *Casco* of the Lakes and St. Lawrence Navigation Company, Limited, was exempted from the operation of Part II of the said Act, relative to Transport by Water, for the season of navigation of 1943, only, when engaged in the carriage of package freight for The Canada Starch Company, Limited, or the Canada Starch Sales Company, Limited;

And whereas the Minister of Transport reports that, under date of February 21, 1944, the Board of Transport Commissioners for Canada advised that it is in receipt of a letter from the Lakes and St. Lawrence Navigation Company, Limited, setting out that the same conditions will exist this year as formerly and, in such circumstances, the Board recommends that the exemption in respect of the said ship be continued for the season of navigation of 1944.

Therefore, His Excellency the Governor General in Council, on the recommendation of the Minister of Transport, is pleased to order that the S.S. *Casco* of the Lakes and St. Lawrence Navigation Company, Limited, be, and it is hereby exempted from the operation of Part II of The Transport Act, 1938, for the season of navigation of 1944, only, when engaged in the carriage of package freight for The Canada Starch Company, Limited, or the Canada Starch Sales Company, Limited.

A. D. P. HEENEY,
Clerk of the Privy Council.

P.C. 1866

PRIVY COUNCIL

CANADA

AT THE GOVERNMENT HOUSE AT OTTAWA

FRIDAY, the 17th day of March, 1944.

PRESENT:

HIS EXCELLENCY

THE GOVERNOR GENERAL IN COUNCIL:

Whereas by Order in Council, P.C. 2594, of April 1, 1943, passed under the provisions of Subsection 2 of Section 12 of The Transport Act, 1938, the S.S. *Caribou* of the Dominion Transportation Company, Limited, and the S.S. *Manitoulin* of the Owen Sound Transportation Company, Limited, were exempted from the operation of Part II of the said Act, relative to Transport by Water, for the season of navigation of 1943, only;

And whereas the Minister of Transport reports that under date of February 21, 1944, the Board of Transport Commissioners for Canada advised that it is in receipt of a letter from the said Companies setting out that the same conditions will exist this year as are summarized in the said Order in Council, and, in such circumstances, the Board recommends that the exemption in respect of the said ships be continued for the season of navigation of 1944.

Therefore, His Excellency the Governor General in Council, on the recommendation of the Minister of Transport, is pleased to order that the S.S. *Caribou* of the Dominion Transportation Company, Limited, and the S.S. *Manitoulin* of the Owen Sound Transportation Company, Limited, be, and they are hereby exempted from the operation of Part II of The Transport Act, 1938, for the season of navigation of 1944, only.

A. D. P. HEENEY,

Clerk of the Privy Council.

P.C. 1867

PRIVY COUNCIL

CANADA

AT THE GOVERNMENT HOUSE AT OTTAWA

FRIDAY, the 17th day of March, 1944.

PRESENT:

HIS EXCELLENCY

THE GOVERNOR GENERAL IN COUNCIL:

Whereas by Order in Council, P.C. 2596, of April 1, 1943, passed under the provisions of Subsection 2 of Section 12 of The Transport Act, 1938, the steamships "Shelterbay", "New York News", "Outarde" and "Heron Bay"; and the motorships "Chicago Tribune" and "Franquelin", of the Quebec and Ontario Transportation Company, Limited, were exempted from the operation of Part II of the said Act for the season of navigation of 1943, only, when engaged in the carriage of package freight for the Ontario Paper Company, Limited, of which the Transportation Company is a wholly-owned subsidiary;

And whereas the Minister of Transport reports that, under date of February 21, 1944, the Board of Transport Commissioners for Canada advised that it is in receipt of a letter from the said Company setting out that the same conditions will exist this year as are summarized in the said Order in Council, with the exception that the Company has included the Quebec North Shore Paper Company operating on the north shore of the St. Lawrence River, for whom the Company's vessels carry supplies under the same conditions as for the Ontario Paper Company, and, in the circumstances, the Board recommends that the exemption in respect of the ships, referred to, be continued for the season of navigation of 1944.

Therefore, His Excellency the Governor General in Council, on the recommendation of the Minister of Transport, is pleased to order that the ships of the Quebec and Ontario Transportation Company, Limited, as above mentioned, be, and they are hereby exempted from the operation of Part II of The Transport Act, 1938, for the season of navigation of 1944, only, when engaged in the carriage of package freight for the Ontario Paper Company, Limited, and the Quebec North Shore Paper Company.

A. D. P. HEENEY,
Clerk of the Privy Council.

P.C. 1901

PRIVY COUNCIL

CANADA

AT THE GOVERNMENT HOUSE AT OTTAWA

FRIDAY, the 17th day of March, 1944.

PRESENT:

HIS EXCELLENCY

THE GOVERNOR GENERAL IN COUNCIL:

Whereas by Order in Council P.C. 4058, of May 15, 1942, certain points and places designated for identification purposes by Route No. C. 65, were named by the Governor in Council, thereby making applicable the provisions of Part III of The Transport Act, 1938, to transport by air between such points and places;

And whereas the Minister of Transport reports that, under date of February 10, 1944, the Board of Transport Commissioners for Canada, in order to add Franquelin, P.Q., to the list of points and places included in the aforesaid route, and for that purpose only, has advised that, in the Board's opinion, all of the provisions of Part III of The Transport Act, 1938, may fittingly be applied to air transport services between the undermentioned points and places, designated for identification purposes by the Route No. C. 65, and has recommended that the said points and places be named by the Governor in Council under the provisions of Subsection 1 (b) of Section 15 of the said Act in substitution for the points and places named in said Order in Council, P.C. 4058, the amended list of names and places being as follows:—

<i>Route No.</i>	<i>Points and Places</i>
C . 65	Rimouski and/or Mont Joli, Matane, Forestville, Bersimis, Outardes Falls, Baie Comeau, Franquelin, Godbout, Trinity Bay, Pentecost, Shelter Bay, Clarke City, Seven Islands, Moisie, Shel-drake, Riviere au Tonnerre, Riviere St. Jean, Mingan, Havre St. Pierre, Port Menier, Baie Johan Beetz, Aguanish, Natashquan, Kegashka, Romaine, (Gethsemani), Harrington Harbour, Tete a la Baleine, Mutton Bay, La Tabatiere, St. Augustin, Old Fort Bay, Bonne Esperance, Middle Bay, Bradore Bay, Blanc Sablon, in the province of Quebec; such points and places to include the area surrounding the same where passengers embark or disembark and/or goods shipped from and destined to the said points and places may be received or delivered.

Therefore, His Excellency the Governor General in Council, on the recommendation of the Minister of Transport, is pleased to revoke and doth hereby revoke Order in Council, P.C. 4058, of May 15, 1942.

His Excellency the Governor General in Council, on the same recommendation and pursuant to the provisions of Subsection 1 (b) of Section 15 of The Transport Act, 1938, is pleased to order that Part III of the said Act be and it is hereby made applicable to transport by Air by means of reasonably regular air transport services between the above mentioned points and places, designated as Route No. C. 65.

A. D. P. HEENEY,
Clerk of the Privy Council.

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The Board of Transport Commissioners for Canada

Judgments, Orders, Regulations and Rulings

Vol. XXXIV

OTTAWA, May 1, 1944

No. 3

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ORDER No. 64649

In the matter of Agreed Charge between the Canadian National Railways, Canadian Pacific Railway Company, Northern Alberta Railways Company and certain shippers covering transportation of lumber and forest products between stations in Western Canada, specified therein, approved by Order No. 59787, dated October 18, 1940.

File No. 40994.13

WEDNESDAY, the 29th day of March, A.D. 1944.

J. A. CROSS, K.C., *Chief Commissioner.*

HUGH WARDROPE, *Asst. Chief Commissioner.*

G. A. STONE, *Commissioner.*

F. M. MACPHERSON, *Commissioner.*

Whereas Lumber Manufacturers Limited and The Wholesale Fuel Company Limited, of Saskatoon, Saskatchewan, have made application under subsection (6) of Section 35 of The Transport Act, 1938, and represented to the Board that their business will be unjustly discriminated against unless a similar charge be fixed for the transport of their lumber and forest products, and have expressed their willingness to meet and comply with the provisions and conditions of the said Agreed Charge—

It is ordered: That the agreed charges approved by the said Order No. 59787, dated October 18, 1940, be, and they are hereby, fixed for the transport by the said railways of lumber and forest products, as described in paragraph B of the said Agreed Charge, for Lumber Manufacturers Limited and The Wholesale Fuel Company Limited from Colwell Mills, Manitoba, to the stations referred to in paragraph C(2) of the said Agreed Charge, subject to and upon the terms and conditions contained in the said Agreed Charge; and the Board hereby appoints the date of this Order as the date on which the said charges fixed as aforesaid are to come into operation.

J. A. CROSS,
Chief Commissioner.

MAY 5 1944



ORDER No. 64645

In the matter of the application of Western Air Lines, Inc., hereinafter called the "Applicant," under Section 13 of The Transport Act, 1938, for a licence to transport passengers and/or goods by air between Great Falls,, Montana—Cut Bank-Shelby, Montana—and Lethbridge, Alberta.

File 42007.32

THURSDAY, the 30th day of March, A.D. 1944.

J. A. CROSS, K.C., *Chief Commissioner.*HUGH WARDROPE, *Asst. Chief Commissioner.*G. A. STONE, *Commissioner.*F. M. MACPHERSON, *Commissioner.*

Whereas, in pursuance of Order No. 63355, dated March 18, 1943, Licence Number C.T.C. (A.T.) 73 was issued to the Applicant for the period of one year commencing on April 24, 1943—

Therefore it is ordered: That a licence be issued to the Applicant for the period of one year commencing on April 24, 1944, in renewal of the said Licence Number C.T.C. (A.T.) 73.

J. A. CROSS,

Chief Commissioner.

ORDER No. 64646

In the matter of the application of The Tree Line Navigation Company, Limited, hereinafter called the "Applicant," for a licence under Section 10 of The Transport Act, 1938.

File 42076.9

THURSDAY, the 30th day of March, A.D. 1944.

J. A. CROSS, K.C., *Chief Commissioner.*HUGH WARDROPE, *Asst. Chief Commissioner.*G. A. STONE, *Commissioner.*F. M. MACPHERSON, *Commissioner.*

Upon the report and recommendation of the Assistant Director, Traffic Department of the Board—

It is ordered: That Licence Number C.T.C. (W.T.) 112 be issued to the Applicant for the period of one year commencing on the 15th day of January, 1944, licensing the following ships:—

Vessel Name	Official Registry No.	Gross Tonnage
<i>Elmbay</i>	150841	1,217
<i>Sprucebay</i>	150845	1,238
<i>Teakbay</i>	154462	1,895

to transport goods by water between all ports or places in Canada on Lakes Ontario, Erie, Huron (including Georgian Bay), and Superior, and their connecting waters, including the St. Lawrence River and its tributaries as far seaward as the west end of the Island of Orleans.

J. A. CROSS,

Chief Commissioner.

ORDER No. 64656

In the matter of the application of Quebec Airways Limited, hereinafter called the "Applicant," to amend Licence Number C.T.C. (A.T.) 78 so as to include Franquelin, in the Province of Quebec, as a point of call.

File 42007.5.6

SATURDAY, the 1st day of April, A.D. 1944.

J. A. CROSS, K.C., *Chief Commissioner.*HUGH WARDROPE, *Asst. Chief Commissioner.*G. A. STONE, *Commissioner.*F. M. MACPHERSON, *Commissioner.*

Whereas, by Order No. 63716, dated June 29, 1943, the Applicant was granted a licence in renewal of Licence Number C.T.C. (A.T.) 78 to transport passengers and/or goods by air between the points and places named by the Governor in Council under Order in Council P.C. 4058, dated May 15, 1942, pursuant to Section 15 (1) (b) of The Transport Act, 1938;

And whereas the said Order in Council P.C. 4058 has been revoked and certain points and places have been named by the Governor in Council under Order in Council P.C. 1901 of March 17, 1944—

Therefore it is ordered: That Licence Number C.T.C. (A.T.) 78 be, and it is hereby, amended so as to apply between the following points and places:—

Rimouski and/or Mont Joli, Matane, Forestville, Bersimis, Outardes Falls, Baie Comeau, Franquelin, Godbout, Trinity Bay, Pentecost, Shelter Bay, Clarke City, Seven Islands, Moisie, Sheldrake, Riviere au Tonnerre, Riviere St. Jean, Mingan, Havre St. Pierre, Port Menier, Baie Johan Beetz, Aguanish, Natashquan, Kegashka, Romaine (Gethsemani), Harrington Harbour, Tete a la Baleine, Mutton Bay, La Tabatiere, St. Augustin, Old Fort Bay, Bonne Esperance, Middle Bay, Bradere Bay, Blanc Sablon, in the Province of Quebec.

J. A. CROSS,

Chief Commissioner.

ORDER No. 64660

In the matter of the applications of the Canadian National Railways and the Canadian Pacific Railway Company, hereinafter called the "Applicants," for permission to advance, on short notice, the effective date of rates on grain and grain products from the Head of the Lakes and ex-lake to Montreal, Quebec, Sorel and Three Rivers, Quebec, as published in Tariffs C.T.C. No. E.3867 and C.T.C. No. E. 5008, respectively.

File Nos. 27612.290 and 27612.292

TUESDAY, the 4th day of April, A.D. 1944.

J. A. CROSS, K.C., *Chief Commissioner.*J. A. STONEMAN, *Commissioner.*G. A. STONE, *Commissioner.*

Upon consideration of the applications to advance the effective date of the rates in the said tariffs; and upon the recommendation of the Assistant Director of Traffic—

It is ordered: That the Applicants be, and they are hereby, permitted to advance the effective date of their Tariffs C.T.C. No. E.3867 and C.T.C. No. E.5008, respectively, as aforesaid, to April 6, 1944, on one day's notice.

J. A. CROSS,

Chief Commissioner.

ORDER No. 64664

In the matter of the application of The Georgian Bay Tourist Company of Midland, Limited, hereinafter called the "Applicant," for a licence under Section 10 of The Transport Act, 1938.

File No. 42076.29

WEDNESDAY, the 5th day of April, A.D. 1944.

J. A. CROSS, K.C., *Chief Commissioner.*
 HUGH WARDROPE, *Asst. Chief Commissioner.*
 J. A. STONEMAN, *Commissioner.*

Upon the report and recommendation of the Assistant Director, Traffic Department of the Board—

It is ordered: That Licence Number C.T.C. (W.T.) 113 be issued to the Applicant for the period of one year commencing on the 15th day of January, 1944, licensing the following ship, namely:—

Vessel Name	Official Registry No.	Gross Tonnage
<i>Midland City</i>	100662	580

to transport passengers and/or goods by water between all ports or places in Canada on Georgian Bay.

J. A. CROSS,
Chief Commissioner.

ORDER No. 64665

In the matter of the application of the M & C Aviation Company Limited, hereinafter called the "Applicant," under Section 13 of The Transport Act, 1938, for a licence to transport passengers and/or goods by air between Prince Albert, Montreal Lake, Lac la Ronge, Sulphide Lake, Dog Lake, Hepden Lake, Stanley, Souris River, Rottenstone Lake, and Foster Lakes, in the Province of Saskatchewan.

File No. 42007.9.1

WEDNESDAY, the 5th day of April, A.D. 1944.

J. A. CROSS, K.C., *Chief Commissioner.*
 HUGH WARDROPE, *Asst. Chief Commissioner.*
 J. A. STONEMAN, *Commissioner.*
 G. A. STONE, *Commissioner.*
 F. M. MACPHERSON, *Commissioner.*

Whereas, in pursuance of Order No. 63403, dated April 5, 1943, a licence was issued to the Applicant in renewal of Licence Number C.T.C. (A.T.) 15 for the period of one year commencing on May 1, 1943—

Therefore it is ordered: That a licence be issued to the Applicant for the period of one year commencing on May 1, 1944, in renewal of the said Licence Number C.T.C. (A.T.) 15.

J. A. CROSS,
Chief Commissioner.

ORDER No. 64666

In the matter of the application of Pan American Airways, Inc., hereinafter called the "Applicant," under Section 13 of The Transport Act, 1938, for a licence to transport passengers and/or goods by air between Juneau, Alaska; Whitehorse and Burwash Landing, Yukon Territory; and Tanacross and Fairbanks, Alaska, only in respect of international air transport service.

File No. 42007.20

WEDNESDAY, the 5th day of April, A.D. 1944.

J. A. CROSS, K.C., *Chief Commissioner.*HUGH WARDROPE, *Asst. Chief Commissioner.*G. A. STONE, *Commissioner.*F. M. MACPHERSON, *Commissioner.*

Whereas, in pursuance of Order No. 63502, dated April 24, 1943, a licence was issued to the Applicant in renewal of Licence Number C.T.C. (A.T.) 18 for the period of one year commencing on May 5, 1943—

Therefore it is ordered: That a licence be issued to the Applicant for the period of one year commencing on May 5, 1944, in renewal of the said Licence Number C.T.C. (A.T.) 18.

J. A. CROSS,
Chief Commissioner.

ORDER No. 64673

In the matter of the application of Canadian Pacific Air Lines Limited, hereinafter called the "Applicant," under Section 21 of The Transport Act, 1938, for approval of Supplement No. 2 to Standard Passenger Tariff C.T.C. (PAL) No. 3 and Supplement No. 2 to Standard Goods Tariff C.T.C. (PAL) No. 5, on file with the Board under file No. 42017.4.

WEDNESDAY, the 5th day of April, A.D. 1944.

J. A. CROSS, K.C., *Chief Commissioner.*HUGH WARDROPE, *Asst. Chief Commissioner.*J. A. STONEMAN, *Commissioner.*

Upon the recommendation of the Assistant Director of the Traffic Department of the Board—

It is ordered: That Supplement No. 2 to the Applicant's Standard Passenger Tariff C.T.C. (PAL) No. 3, and Supplement No. 2 to the Applicant's Standard Goods Tariff C.T.C. (PAL) No. 5, on file with the Board under file No. 42017.4, be, and they are hereby, approved.

J. A. CROSS,
Chief Commissioner.

ORDER No. 64686

In the matter of the application of the Oshawa Railway Company, under Section 330 of the Railway Act, for approval of Standard Freight Distance Tariff C.T.C. No. 38, on file with the Board under file No. 30728.

MONDAY, the 10th day of April, A.D. 1944.

J. A. CROSS, K.C., *Chief Commissioner.*

HUGH WARDROPE, *Asst. Chief Commissioner.*

J. A. STONEMAN, *Commissioner.*

Upon the recommendation of the Assistant Director of the Traffic Department of the Board—

It is ordered: That Standard Freight Distance Tariff C.T.C. No. 38 of the Oshawa Railway Company, on file with the Board under file No. 30728, be, and it is hereby, approved: the said tariff, with a reference to this Order, to be published in at least two consecutive weekly issues of the *Canada Gazette*.

J. A. CROSS,
Chief Commissioner.

ORDER No. 64687

In the matter of the application of the Thousand Islands Railway Company, under Section 330 of the Railway Act, for approval of Standard Freight Distance Tariff C.T.C. No. 469, on file with the Board under file No. 44023.

MONDAY, the 10th day of April, A.D. 1944.

J. A. CROSS, K.C., *Chief Commissioner.*

HUGH WARDROPE, *Asst. Chief Commissioner.*

J. A. STONEMAN, *Commissioner.*

Upon the recommendation of the Assistant Director of the Traffic Department of the Board—

It is ordered: That Standard Freight Distance Tariff C.T.C. No. 469 of the Thousand Islands Railway Company, on file with the Board under file No. 44023, be, and it is hereby, approved: the said tariff, with a reference to this Order, to be published in at least two consecutive weekly issues of the *Canada Gazette*.

J. A. CROSS,
Chief Commissioner.

ORDER No. 64689

In the matter of the application of the Montreal and Southern Counties Railway Company, under Section 330 of the Railway Act, for approval of Standard Freight Distance Tariff C.T.C. No. 151, on file with the Board under file No. 28439.3.

MONDAY, the 10th day of April, A.D. 1944.

J. A. CROSS, K.C., *Chief Commissioner.*

HUGH WARDROPE, *Asst. Chief Commissioner.*

J. A. STONEMAN, *Commissioner.*

Upon the recommendation of the Assistant Director of the Traffic Department of the Board—

It is ordered: That Standard Freight Distance Tariff C.T.C. No. 151 of the Montreal and Southern Counties Railway Company, on file with the Board under file No. 28439.3, be, and it is hereby, approved: the said tariff, with a reference to this Order, to be published in at least two consecutive weekly issues of the *Canada Gazette*.

J. A. CROSS,
Chief Commissioner.

GENERAL ORDER No. 661

In the matter of the General Order of the Board No. 32, dated March 26, 1909, as amended by General Order No. 628, dated September 25, 1942, prescribing the form, style, size and filing procedure of tariffs of telegraph tolls to be charged by telegraph companies subject to the jurisdiction of the Board, and the manner in which such tariffs shall be kept for public inspection.

File No. 10041

THURSDAY, the 23rd day of March, A.D. 1944.

J. A. CROSS, K.C., *Chief Commissioner.*

HUGH WARDROPE, *Assistant Chief Commissioner.*

G. A. STONE, *Commissioner.*

F. M. MACPHERSON, *Commissioner.*

Upon the report and recommendation of the Director of the Traffic Department of the Board—

It is ordered that all tariffs and supplements filed with the Board must conform to the following regulations:—

1. Tariffs and supplements must be of uniform size, namely, eight (8) inches wide by eleven (11) inches long. They must be plainly printed or mimeographed on paper of good quality and be consecutively numbered as provided in Rule 4.

2. Two copies of each tariff, supplement or revised pages of loose-leaf tariffs shall be filed with the Board accompanied by a filing advice, in duplicate, consecutively numbered (see Appendix A). The original filing advice will be retained and the duplicate stamped with date of receipt and returned. Both copies of the tariffs, supplements or revised pages of loose-leaf tariffs, if approved, will be so endorsed, the originals to be retained by the Board and the duplicates thereof returned to the telegraph company. They shall be addressed to the Director, Traffic Department, Board of Transport Commissioners for Canada, Ottawa, Ontario. If the envelope is plainly marked, "O.H.M.S.", no postage is required.

3. The act of mailing is not construed as filing. Tariffs, supplements, revised loose-leaf pages, contracts, agreements, arrangements or other forms

which affect telegraph tolls must reach Ottawa in time to give at least the required notice: thirty days in the case of an advance and three days in the case of other changes, before they shall have become effective.

4. Tariffs and supplements must be clear and explicit so as to leave no doubt as to their proper application. They shall show the name of the issuing company; date of issue and date effective; name, title and address of the officer issuing same; and be consecutively numbered in the following manner:—

- (a) In the upper right-hand corner, each tariff shall be numbered beginning with No. 1. Such number shall be shown as follows:

C.T.C. No. . . .

- (b) When tariffs are issued cancelling a tariff or tariffs previously filed, the C.T.C. number or numbers of the tariff or tariffs cancelled must be shown in the upper right-hand corner immediately under the C.T.C. number of the new tariff.

Example: C.T.C. No. 2
 cancels
 C.T.C. No. 1.

- (c) Supplements to a tariff, in addition to showing the C.T.C. number of the tariff amended thereby, shall be numbered beginning with the number "1", and such information shall be shown in the upper right-hand corner. Supplements shall also show in the upper right-hand corner the number of any previous supplement cancelled thereby and also the numbers of the supplements containing all changes from the tariff.

Example: Supplement No. 3
 to
 C.T.C. No. 1
 cancels
 Supplement No. 2

Supplements Nos. 1 and 3 contain all changes.

5. Pages of loose-leaf tariffs shall be printed on one side only, shall be consecutively numbered and designated as original page 1, original page 2, etc. Each page shall show at the top the name of the issuing telegraph company, the C.T.C. number and the page number. At the bottom of the page shall be shown the date of issue, the effective date and the name of the issuing officer or agent. Changes in loose-leaf tariffs shall be made by reprinting the page which shall be designated as "first revised page 1 cancels original page 1" or "second revised page 1 cancels first revised page 1", etc.

6. All tariffs, supplements and revised loose-leaf pages shall indicate changes thereby made in existing rates or charges, rules, regulations or practices by the use of the following symbols, which shall be used for no other purpose:—

- C—Signifies changed regulation.
- R—Signifies reduced rate.
- I—Signifies increased rate.
- N—Signifies new matter.
- D—Signifies discontinued rate or regulation.
- S—Signifies reissued matter.
- T—Signifies changed text but no change in rate or regulation.
- sf—Signifies that there is no additional charge on messages delivered by telephone to addressees who can be reached by telephone for the station-to-station telephone charge.
- tsa—Signifies "tariff same as".

Explanation of such symbols must be published in the tariff or supplement in which used. When a change of the same character is made in all, or substantially all, rates in a tariff or supplement, or a page thereof, that fact and the nature of such change may be indicated in distinctive type at the top of the page in the following manner:—"All rates on this page are (here state whether reductions or increases), except as otherwise indicated". In such case, a bold face dot ● shall be used to symbolize a rate in which no change is made.

7. Where a tariff contains joint rates between points in Canada over the lines of two or more companies, every Canadian company participating in such joint tariff, published by the issuing carrier, shall file with the Board concurrences as herein prescribed (Appendix B). They shall be uniform in size, eight by eleven inches, be consecutively numbered, contain a full and exact description of the tariff concurred in, and be signed in person by the official filing the same or by some person duly authorized to sign for him, such person to affix his signature in full to the name of the official for whom he signs, the Board to be kept advised of the names of the persons to whom such authority is delegated. Two copies of each concurrence certificate shall be filed with the Board, one of which will be stamped with date of receipt and returned.

And it is further ordered that each telegraph company deposit and keep on file at all of its offices or stations where telegrams are received for transmission a copy of each of its tariffs in use thereat, such tariffs to be kept in a convenient place, open for the inspection of the public during business hours, and that the company post a notice at each office or station, prominently and in bold type, informing the public that the company's tariffs of telegraph tolls in use at the said office or station are open to inspection and may be seen upon application to the operator or other person in charge; and, by general order, direct its employees to produce on request any particular tariff in use at that office or station which any applicant may desire to inspect.

And the Board further orders that the said General Orders Nos. 32 and 628, dated respectively March 26, 1909, and September 25, 1942, be, and they are hereby, rescinded.

J. A. CROSS,
Chief Commissioner,

A

.....
Name of Company

.....
Place and Date

Filing Advice No.....

The DIRECTOR,
Traffic Department,
Board of Transport Commissioners for Canada,
Ottawa, Ont.

SIR:—

In compliance with the requirements of The Railway Act, I transmit herewith, for filing with the Commission, copies of tariffs, as follows:—

Supplement No.	C.T.C. No.	Date Taking Effect	Description

Name

Title

Address

B

.....
Name of Concurring Telegraph Company

.....
Place and Date

Concurrence Certificate No.....

The DIRECTOR,
Traffic Department,
Board of Transport Commissioners for Canada,
Ottawa, Ont.

This is to certify that the.....Telegraph Company assents to and concurs in the publication and filing of the schedule described below and supplements thereto, and hereby makes itself a party thereto:—

C.T.C. Number
and Title

{
.....
.....
.....
(Exact description of title of schedule)

Date of Issue.....

Date Effective.....

Issued by

.....
(Official)

.....
(Telegraph Company)

(Signature)

(Title)

ACCIDENTS REPORTED TO THE OPERATING DEPARTMENT, BOARD OF TRANSPORT COMMISSIONERS FOR CANADA, FEBRUARY, 1944

Railway accidents	157 with 12 killed and 156 injured
Level crossing accidents.....	28 with 13 killed and 42 injured
Totals	<u>185 with 25 killed and 198 injured</u>

	Killed	Injured
Passengers	—	64
Employees	5	188
Others	20	46
Totals	<u>25</u>	<u>198</u>

DETAILS OF ACCIDENTS AT HIGHWAY CROSSINGS

Accidents K.	I.	QUEBEC
1	—	3 Automobile ran into side of train. Licence Que. 74034.
1	2	2 Automobile drove onto crossing in front of approaching train and was struck. Lic. Que. C-3746.
1	—	1 Auto truck drove onto crossing in front of approaching train and was struck. Lic. F-24202.
1	4	3 Automobile drove onto crossing in front of approaching train and was struck. Lic. Que. 24542.
1	1	— Pedestrian walked onto crossing in front of approaching train and was struck.
1	1	1 Automobile drove onto crossing in front of approaching train and was struck. Lic. Que. 157849.
1	—	2 Auto Bus drove onto crossing in front of approaching train and was struck. Lic. A-1196.

ONTARIO

1	1	—	Automobile drove onto crossing in front of approaching train and was struck. Lic. Ont. 7-A-144.
1	—	4	Automobile drove onto crossing in front of approaching train and was struck. Lic. Ont. 151-H-3.
1	—	1	Automobile drove onto crossing in front of approaching train and was struck. Lic. Ont. J-4595.
1	—	1	Auto truck drove onto crossing in front of approaching train and was struck. Lic. Ont. 30629-C.
1	—	1	Auto truck drove onto crossing in front of approaching train and was struck. Lic. Ont. 73082-C.
1	—	1	Auto struck by Track Motor car. Licence Ont. 7-T-611.
1	—	3	Auto truck drove onto crossing in front of approaching train and was struck. Lic. Ont. 93717-C & PCV 1956-F.
1	—	1	Automobile ran into side of train. Licence Ont. 96-C-54.
1	—	1	Automobile drove onto crossing in front of approaching train and was struck. Lic. Ont. 452-H-7.
1	1	—	Auto truck drove onto crossing in front of approaching train and was struck. Lic. Ont. 60576.
1	—	2	Auto truck struck Track Motor car. Ont. Licence 82534-C.
1	—	1	Auto truck drove onto crossing in front of approaching train and was struck. Lic. Ont. 32130-C.
1	1	1	Auto truck drove onto crossing in front of approaching train and was struck. Lic. Ont. 44910-C.
1	—	1	Auto truck drove onto crossing in front of approaching train and was struck. Lic. Ont. 31803-C.

DETAILS OF ACCIDENTS AT HIGHWAY CROSSINGS—*Con.*

Accidents K.		I.		ONTARIO— <i>Con.</i>	
1	—	2		Auto truck skidded onto crossing in front of approaching train and was struck. Lic. Ont. 10986-C.	
1	1	2		Automobile drove onto crossing in front of approaching train and was struck. Lic. Ont. 7-R-985.	
MANITOBA					
1	—	1		Auto Bus ran into side of train. Man. Lic. PSV-97.	
SASKATCHEWAN					
1	1	—		Horse drawn sleigh drove onto crossing in front of approaching train and was struck.	
1	—	4		Auto drove on crossing in front of approaching train and was struck. Lic. Sask. 28-406.	
ALBERTA					
1	—	1		Automobile drove onto crossing in front of approaching train and was struck. Alta. Lic. 52-091.	
BRITISH COLUMBIA					
1	—	2		Automobile drove onto crossing in front of approaching train and was struck. B.C. Lic. 20-772.	

Of the 28 accidents at highway crossings, 20 occurred at unprotected crossings and 8 at protected crossings. Nineteen of the accidents occurred after sunrise and 9 after sunset.

April 4th, 1944.

SUMMARY OF ORDERS ISSUED BY THE BOARD

- 64644 Mar. 29—Declaring Esquimalt & Nanaimo Railway crossing at mileage 16.1 Lake Cowichan Subd., B.C. protected to Board's satisfaction.
- 64645 Mar. 30—Authorizing issuing of licence to Western Air Lines, Inc. in renewal of Licence No. C.T.C. (A.T.) 73.
- 64646 Mar. 30—Authorizing issuing of Licence No. C.T.C. (W.T.) 112 to the Tree Line Navigation Co., Ltd.
- 64647 Mar. 29—Declaring Esquimalt & Nanaimo Railway crossing mileage 72.6 Victoria Subd., B.C., protected to Board's satisfaction; present speed limitation of ten miles per hour to be maintained.
- 64648 Mar. 29—Relieving C.P.R. from maintaining fences, gates and cattle guards on its Youngstown Subd'n between Biette and Youngstown, Alta.
- 64649 Mar. 29—Approving agreed charges for the transport of lumber and forest products for Lumber Manufacturers Ltd., and The Wholesale Fuel Company Limited, Colwell Mills, Man.
- 64650 Mar. 29—Authorizing Pere Marquette Railway Co. and New York Central Railroad Co. to operate its passenger trains over interlocking plant at Fargo Station, Ont.
- 64651 Mar. 30—Declaring C.N.R. crossing west of station at Stratton, Ont., protected to Board's satisfaction.
- 64652 Mar. 30—Declaring C.N.R. crossing just south of Principal Street in St. Laurent, Que., protected to Board's satisfaction; speed limitation of ten miles per hour to be maintained.
- 64653 Mar. 30—Authorizing R.M. of Bjorkdale No. 426, Sask. to construct, and maintain public highway crossing over C.N.R. at mileage 41.1 Tisdale Subd., Sask.
- 64654 Apr. 1—Approving proposed location of one additional vertical storage tank, etc. of Imperial Oil Ltd., near tracks of C.P.R. at Assiniboia, Sask.
- 64655 Apr. 1—Declaring C.P.R. crossing of North Street, Sault Ste. Marie, Ont., protected to Board's satisfaction; present speed limitation of ten miles per hour to be maintained.
- 64656 Apr. 1—Amending Quebec Airways Ltd. Licence No. C.T.C. (A.T.) 78 so as to include Franquelin, Que., as a point of call.
- 64657 Apr. 1—Approving location of freight and passenger shelter of C.N.R. at Bears Pass, Ont.
- 64658 Apr. 1—Declaring New York Central Railroad crossing first west of St. Timothee Station, Que. protected to Board's satisfaction.
- 64659 Apr. 5—Authorizing C.N.R. to construct proposed spur across Provincial Highway, Twp. of Dubuisson, Que. to serve Canadian International Paper Co.
- 64660 Apr. 4—Authorizing C.N.R. and C.P.R. to advance effective date of rates on grain and grain products from the Head of the Lakes to Montreal, etc.
- 64661 Apr. 4—Approving tolls published in Tariff, filed by the Sydney & Louisburg Railway Co. under Sec. 9 of the Maritime Freight Rates Act.
- 64662 Apr. 4—Approving C.N.R. plan showing changes in protection of diamond crossing at Lachine Canal, St. Henri, Que.
- 64663 Apr. 4—Approving C.N.R. plan A, showing protection of diamond crossings at north end of Montreal Terminal.
- 64664 Apr. 5—Authorizing issuing of Licence to The Georgian Bay Tourist Company of Midland, Ltd. to transport passengers and/or goods by water.
- 64665 Apr. 5—Authorizing issuing of Licence to M & C Aviation Company Ltd. in renewal of Licence No. C.T.C. (A.T.) 15.
- 64666 Apr. 5—Authorizing issuing of Licence to Pan American Airways, Inc. in renewal of Licence No. C.T.C. (A.T.) 18.
- 64667 Apr. 5—Approving plan, showing protection at the crossing of the highway at mileage 33.77 Bedford Subd., N.S., C.N.R.
- 64668 Apr. 5—Approving location and details of C.P.R. Co's new A-2 station at Fife Lake, Sask.
- 64669 Apr. 5—Declaring C.P.R. crossing of Churchill Ave. first crossing east of station at Westboro, Ont. protected to Board's satisfaction.
- 64670 Apr. 5—Declaring C.N.R. crossing first west of Oakner Station, Man. protected to Board's satisfaction.
- 64671 Apr. 6—Declaring C.N.R. crossing at Rosebank, Ont., protected to Board's satisfaction.
- 64672 Apr. 5—Declaring C.P.R. crossing south of Iberville Station, Que. protected to Board's satisfaction.

- 64673 Apr. 5—Approving Supplement No. 2 to the Standard Passenger Tariff C.T.C. (PAL) No. 3, and Supplement No. 2 to the Standard Goods Tariff C.T.C. (PAL) No. 5 C.P.R. Air Lines Ltd.
- 64674 Apr. 5—Declaring C.N.R. crossing first north of station at Emerson Junction, Man. protected to Board's satisfaction.
- 64675 Apr. 5—Authorizing the Department of Public Works for the Province of Alta. to construct the Bickerdike and Coalspur Highway across the C.N. Rys' Lovett Subd., Alta., mileage 17·5.
- 64676 Apr. 5—Authorizing the Department of Public Works for the Province of Alta. to construct the Bickerdike and Coalspur Highway across the C.N. Rys. Lovett Subd., Alta. at mileage 32·2.
- 64677 Apr. 5—Authorizing the Department of Public Works for the Province of Alta. to construct the Bickerdike and Coalspur Highway across C.N. Rys. at mileage 0·93 Mountain Park Subd., Alta.
- 64678 Apr. 6—Declaring C.P.R. crossing of William Street in the Town of Carleton Place, Ont. protected to Board's satisfaction.
- 64679 Apr. 6—Approving location and details of C.P.R. Co's new A-2 station at Gunnworth, Sask.
- 64680 Apr. 6—Declaring New York Central Railroad crossing of Main Street in the Village of Hagersville, Ont. protected to Board's satisfaction.
- 64681 Apr. 6—Approving revised location of C.N. Rys' Neidpath-Swift Current Branch between mileages 125·98 and 128·07 and crossing north and south road allowances between Secs. 19 and 20, Twp. 15. Rge. 10, W3M., Sask.
- 64682 Apr. 10—Declaring C.N.R. crossing of Lanstaff Road about three miles south of Richmond Hill, Ont. protected to Board's satisfaction.
- 64683 Apr. 10—Declaring C.N.R. crossing second east of Glencoe Station, Ont. protected to Board's satisfaction.
- 64684 Apr. 10—Approving Traffic Contract between C.N.R. and The Western Union Telegraph Co., and The Canadian Northern Telegraph Co., and The Great North Western Telegraph Co.
- 64685 Apr. 10—Approving Traffic Contracts between C.N. Rys. and certain other Railways and Telegraph Companies.
- 64686 Apr. 10—Approving Standard Freight Distance Tariff C.T.C. No. 38 of Oshawa Railway Co.
- 64687 Apr. 10—Approving Standard Freight Distance Tariff C.T.C. No. 469 of Thousand Islands Railway Co.
- 64688 Apr. 10—Declaring C.P.R. crossing of the highway at mileage 20·23 Hoadley Subd., Alta. protected to Board's satisfaction.
- 64689 Apr. 10—Approving Standard Freight Distance Tariff C.T.C. No. 151 of the Montreal and Southern Counties Railway Co.
- 64690 Apr. 10—Declaring C.N.R. crossing of Division Street, Arnprior, Ont. protected to Board's satisfaction.
- 64691 Apr. 11—Authorizing C.N.R. to operate their engines, etc. over the main lead track as relocated and siding of The Toronto Harbour Commissioners, serving Toronto Fuels Ltd.
- 64692 Apr. 11—Approving tolls published by the C.N.R. under Sec. 3 of the Maritime Freight Rates Act.
- 64693 Apr. 11—Authorizing the C.P.R. to construct a branch line of railway to serve the Bala Lumber Co. at mileage 115·0 MacTier Subd., Ont.
- 64694 Apr. 11—Declaring C.P.R. crossing of Victoria St., Alliston, Ont. protected to Board's satisfaction.
- 64695 Apr. 11—Authorizing Dept. of Public Works for the Province of Alta. to construct the Bickerdike-Coalspur Highway across tracks of C.N.R. at mileage 27·96 Lovett Subd.
- 64696 Apr. 11—Approving proposed location of one 55,000 barrel storage tank of Consumers' Co-operative Refineries Ltd. near tracks of C.N. Rys. at Regina, Sask.
- 64697 Apr. 11—Approving clearances of Standard No. 2 ice house, with elevated platform of C.P.R.
- 64698 Apr. 12—Approving tolls published in Tariff filed by the C.P.R. under Sec. 9 of the Maritime Freight Rates Act.
- 64699 Apr. 12—Approving tolls published in Tariff filed by the C.P.R. under Sec. 9 of the Maritime Freight Rates Act.
- 64700 Apr. 12—Approving tolls published in Tariff filed by the Canadian Freight Association under Secs. 3 and 9 of the Maritime Freight Rates Act.
- 64701 Apr. 12—Approving tolls published in Tariff filed by Canadian Freight Association under Sec. 3 of Maritime Freight Rates Act.

NOTICES, ORDERS IN COUNCIL, ETC.

The following Order in Council is reproduced for the information of all concerned:—

P.C. 2477

PRIVY COUNCIL

SEAL

CANADA

AT THE GOVERNMENT HOUSE AT OTTAWA

THURSDAY, the 6th day of April, 1944.

PRESENT

HIS EXCELLENCY

THE GOVERNOR GENERAL IN COUNCIL:

Whereas Order in Council, P.C. 1829, of March 8, 1943, made under the provisions of subsection 2 of Section 12 of The Transport Act, 1938, exempted from the operation of Part II of the said Act, relative to Transport by Water, certain ships of Canada Steamship Lines Limited, as therein listed, for the season of navigation of 1943 only, in respect of the transport of goods between Quebec and Montreal and intermediate ports;

And whereas the Minister of Transport reports that, under date March 24, 1944, the Board of Transport Commissioners for Canada advised that it is in receipt of an application from the Company for further exemption in respect of the service described;

That in the said application the Company states that the ships which engage either continuously or intermittently in such service and which comprise the class of ships for which the exemption is sought, are as follows:—

PASSENGER AND GOODS VESSELS

<i>Quebec</i>		<i>Richelieu</i>
<i>St. Lawrence</i>	<i>Saguenay</i>	<i>Tadoussac</i>
GOODS ONLY		
<i>Battleford</i>	<i>Fernie</i>	<i>Fairmount</i>
<i>Beaverton</i>	<i>Kenora</i>	<i>Grainmotor</i>
<i>Calgarian</i>	<i>Lethbridge</i>	<i>Hastings</i>
<i>City of Hamilton</i>	<i>Saskatoon</i>	<i>Kinmount</i>
<i>City of Kingston</i>	<i>Selkirk</i>	<i>Mapleheath</i>
<i>City of Toronto</i>	<i>Weyburn</i>	<i>Meaford</i>
<i>City of Montreal</i>	<i>Winnipeg</i>	<i>Penetang</i>
<i>City of Windsor</i>	<i>Acadian</i>	<i>Simcoe</i>
<i>Edmonton</i>	<i>Barrie</i>	<i>Starmount</i>
<i>Canadian</i>	<i>Elgin</i>	

That the Board of Transport Commissioners advises that the conditions under which the service is conducted do not appear to be substantially different from those existing during the season of navigation of 1943, and the Board recommends that the exemption applied for be granted;

Therefore, His Excellency the Governor General in Council, on the recommendation of the Minister of Transport, is pleased to order that the ships of Canada Steamship Lines Limited, as above listed, be and they are hereby exempted from the operation of Part II of The Transport Act, 1938, for the season of navigation of 1944, only, in respect of the transport of goods between Quebec and Montreal and intermediate ports.

A. D. P. HEENEY,
Clerk of the Privy Council.

The Board of Transport Commissioners for Canada

Judgments, Orders, Regulations and Rulings

VOL. XXXIV

OTTAWA, May 15, 1944

No. 4

This publication is issued fortnightly, on the 1st and 15th of each month. Annual subscription, \$3.00; single numbers, 20 cents; in quantities, 25 per cent discount. Remittances should be made to the King's Printer, Ottawa, by postal money order, express order or accepted cheque. The use of currency for this purpose is contrary to the advice of the postal authorities and entails a measure of risk. Postage stamps, foreign money or uncertified cheques will not be accepted. No extra charge is made for postage on documents forwarded to points in Canada and in the United States, but cost of postage is added to the selling price when documents are mailed to other countries. Early application should be made for copies in quantities. Subscriptions should be sent, in every case, to the King's Printer, Ottawa.

ORDER No. 64702

In the matter of the application of Northeast Airlines, Inc., hereinafter called the "Applicant," under Section 13 of The Transport Act, 1938, for a licence to transport passengers and/or goods by air between Montreal, in the Province of Quebec; Burlington, Montpelier, and Barre, Vermont; Concord and Manchester, New Hampshire; and Boston, Massachusetts.

File No. 42007-3

WEDNESDAY, the 12th day of April, A.D. 1944.

J. A. CROSS, K.C., *Chief Commissioner.*

HUGH WARDROPE, *Assistant Chief Commissioner.*

J. A. STONEMAN, *Commissioner.*

G. A. STONE, *Commissioner.*

F. M. MACPHERSON, *Commissioner.*

Whereas, in pursuance of Order No. 63461, dated April 14, 1943, a licence was issued to the Applicant in renewal of Licence Number C.T.C. (A.T.) 17 for the period of one year from May 5, 1943:—

Therefore it is ordered: That a licence be issued to the Applicant for the period of one year commencing May 5, 1944, in renewal of the said Licence Number C.T.C. (A.T.) 17.

J. A. CROSS,
Chief Commissioner.



ORDER No. 64741

In the matter of the application of Agents Doe, Curlett, Jones and Kipp, hereinafter referred to as the "Applicants" for authority to publish rates on Fish Livers in Transcontinental Tariffs on short notice.

File No. 27612.296

MONDAY, the 17th day of April, A.D. 1944.

J. A. CROSS, K.C., *Chief Commissioner.*HUGH WARDROPE, *Assistant Chief Commissioner.*J. A. STONEMAN, *Commissioner.*

Whereas, by schedules noted hereunder, increased rates on Fish Livers filed in August, 1943, were suspended by the Interstate Commerce Commission under Investigation and Suspension Docket No. 5248, which suspension was vacated and such tolls permitted to go into effect April 18, 1944, on one day's notice.

And whereas, to provide for uniform application of the said tolls, the Applicants desire authority to amend the said tariffs on short notice—

It is ordered: That the Applicants may publish, effective April 18, 1944, amendments to the following tariffs on one day's notice:—

Agent Doe's C.T.C. 421

" Curlett's C.T.C. A-528

" Jones' C.T.C. 1878

" Kipp's C.T.C.'s 788, 791, 793.

J. A. CROSS,

Chief Commissioner.

ORDER No. 64730

In the matter of the application of the Canadian Pacific Railway Company, hereinafter called the "Applicant Company," for permission to amend its Tariffs C.T.C. Nos. 4533, 4939, 4872, 4943, 4996, 4429 and 4711 on short notice.

File 27612.292

WEDNESDAY, the 19th day of April, A.D. 1944.

J. A. CROSS, K.C., *Chief Commissioner.*HUGH WARDROPE, *Assistant Chief Commissioner.*G. A. STONE, *Commissioner.*

Whereas, by Service Order No. 197, the Interstate Commerce Commission has prohibited the use of box cars or refrigerator cars for the movement of potatoes, effective April 21, 1944, as therein mentioned;

And whereas the Applicant Company desires to suspend the operation of all rules, regulations or charges contained in the tariffs above mentioned in so far as they conflict with the provisions of said Service Order No. 197—

It is ordered: That the Applicant Company be, and it is hereby, permitted to amend the said tariffs as aforesaid, effective on one day's notice.

J. A. CROSS,

Chief Commissioner.

ORDER No. 64743

In the matter of the application of Canadian Pacific Air Lines, Limited, hereinafter called the "Applicant", under Section 13 of The Transport Act, 1938, for a licence to transport passengers and/or goods by air between Victoria and Vancouver, British Columbia.

File No. 42007-34-1

THURSDAY, the 20th day of April, A.D. 1944.

J. A. CROSS, K.C., *Chief Commissioner.*

HUGH WARDROPE, *Assistant Chief Commissioner.*

G. A. STONE, *Commissioner.*

F. M. MACPHERSON, *Commissioner.*

Whereas, in pursuance of Order No. 63555, dated May 12, 1943, Licence Number C.T.C. (A.T.) 80 was issued to the Applicant for the period of one year commencing on May 15, 1943.

Therefore it is ordered: That a licence be issued to the Applicant for the period of one year commencing on May 15, 1944 in renewal of the said Licence Number C.T.C. (A.T.) 80.

J. A. CROSS,

Chief Commissioner.

ORDER No. 64744

In the matter of the application of Canadian Pacific Air Lines, Limited, hereinafter called the "Applicant", under Section 13 of The Transport Act, 1938, for a licence to transport passengers and/or goods by air between Regina, Moose Jaw, Saskatoon, Prince Albert and North Battleford, Saskatchewan.

File No. 42007.34.2

THURSDAY, the 20th day of April, A.D. 1944.

J. A. CROSS, K.C., *Chief Commissioner.*

HUGH WARDROPE, *Assistant Chief Commissioner.*

J. A. STONEMAN, *Commissioner.*

G. A. STONE, *Commissioner.*

F. M. MACPHERSON, *Commissioner.*

Whereas, in pursuance of Order No. 63556, dated May 12, 1943, Licence Number C.T.C. (A.T.) 81 was issued to the Applicant for the period of one year commencing on May 15, 1943—

Therefore it is ordered: That a licence be issued to the Applicant for the period of one year commencing on May 15, 1944, in renewal of the said Licence Number C.T.C. (A.T.) 81.

J. A. CROSS,

Chief Commissioner.

ORDER No. 64745

In the matter of the application of Canadian Pacific Air Lines, Limited, hereinafter called the "Applicant", under Section 13 of The Transport Act, 1938, for a licence to transport passengers and/or goods by air between Ceepeecee, Chamiss Bay, Esparanza, McBride Bay (Port Tahsis), Nanaimo, Nootka, Port Alberni, Tofino, Ucluelet, Vancouver and Zeballos, British Columbia.

File No. 42007-34-3

THURSDAY, the 20th day of April, A.D. 1944.

J. A. CROSS, K.C., *Chief Commissioner.*

HUGH WARDROPE, *Assistant Chief Commissioner.*

F. M. MACPHERSON, *Commissioner.*

Whereas, in pursuance of Order No. 63557, dated May 12, 1943, Licence Number C.T.C. (A.T.) 82 was issued to the Applicant for the period of one year commencing on May 15, 1943.

Therefore it is ordered: That a licence be issued to the Applicant for the period of one year commencing on May 15, 1944 in renewal of the said Licence Number C.T.C. (A.T.) 82.

J. A. CROSS,

Chief Commissioner.

ORDER No. 64746

In the matter of the application of Canadian Pacific Air Lines, Limited, hereinafter called the "Applicant", under Section 13 of The Transport Act, 1938, for a licence to transport passengers and/or goods by air between Alert Bay, Campbell River, Coal Harbour, Englewood, Port Alice, Port Hardy, Port McNeill, Powell River, Quatsino, Rock Bay, Sayward, and Vancouver, British Columbia.

File No. 42007.34.4

THURSDAY, the 20th day of April, A.D. 1944.

J. A. CROSS, K.C., *Chief Commissioner.*

G. A. STONE, *Commissioner.*

F. M. MACPHERSON, *Commissioner.*

Whereas, in pursuance of Order No. 63558 dated May 12, 1943, Licence Number C.T.C. (A.T.) 83 was issued to the Applicant for the period of one year commencing on May 15, 1943—

Therefore it is ordered: That a licence be issued to the Applicant for the period of one year commencing on May 15, 1944, in renewal of the said Licence Number C.T.C. (A.T.) 83.

J. A. CROSS,

Chief Commissioner.

ORDER No. 64747

In the matter of the application of Canadian Pacific Air Lines, Limited, hereinafter called the "Applicant", under Section 13 of The Transport Act, 1938, for a licence to transport passengers and/or goods by air between Finlay Forks, Fort Grahame, Fort Ware, Lower Post, McLeod Lake, Prince George, British Columbia; and Watson Lake, Yukon Territory.

File No. 42007·34·8

THURSDAY, the 20th day of April, A.D. 1944.

J. A. CROSS, K.C., *Chief Commissioner.*

HUGH WARDROPE, *Assistant Chief Commissioner.*

G. A. STONE, *Commissioner.*

F. M. MACPHERSON, *Commissioner.*

Whereas, in pursuance of Order No. 63559, dated May 12th, 1943, Licence Number C.T.C. (A.T.) 84 was issued to the Applicant for the period of one year commencing on May 15th 1943—

Therefore it is ordered: That a licence be issued to the Applicant for the period of one year commencing on May 15th, 1944, in renewal of the said Licence Number C.T.C. (A.T.) 84.

J. A. CROSS,

Chief Commissioner.

ORDER No. 64748

In the matter of the application of Canadian Pacific Air Lines, Limited, hereinafter called the "Applicant", under Section 13 of the Transport Act, 1938, for a licence to transport passengers and/or goods by air between Big River, Buffalo Narrows, Buffalo River, Clear Lake, Contact Lake, Cree Lake, Doré Lake, Fond du Lac, Foster Lakes, Goldfields, Ile à la Crosse, Lac la Ronge, La Loche, La Plonge/Beauval, Montreal Lake, Pine River, Prince Albert, Souris, Stanley Mission, Stony Rapids and Sulphide Lake, Saskatchewan.

File 42007·34·10

THURSDAY, the 20th day of April, A.D. 1944.

J. A. CROSS, K.C., *Chief Commissioner.*

HUGH WARDROPE, *Assistant Chief Commissioner.*

G. A. STONE, *Commissioner.*

F. M. MACPHERSON, *Commissioner.*

Whereas, in pursuance of Order No. 63560, dated May 12th, 1943, Licence Number C.T.C. (A.T.) 85 was issued to the Applicant for the period of one year commencing on May 15th, 1943—

Therefore it is ordered: That a licence be issued to the Applicant for the period of one year commencing on May 15th, 1944, in renewal of the said Licence Number C.T.C. (A.T.) 85.

J. A. CROSS,

Chief Commissioner.

ORDER No. 64749

In the matter of the application of Canadian Pacific Air Lines, Limited, hereinafter called the "Applicant", under Section 13 of the Transport Act, 1938, for a licence to transport passengers and/or goods by air between Cameron Lake, Madeleine Lake, Senneterre and Waswanipi Lake Quebec.

File No. 42007·34·14

THURSDAY, the 20th day of April, A.D. 1944.

J. A. CROSS, K.C., *Chief Commissioner.*

HUGH WARDROPE, *Assistant Chief Commissioner.*

G. A. STONE, *Commissioner.*

F. M. MACPHERSON, *Commissioner.*

Whereas, in pursuance of Order No. 63561, dated May 12th, 1943, Licence Number C.T.C. (A.T.) 86 was issued to the Applicant for the period of one year commencing on May 15th, 1943—

Therefore it is ordered: That a licence be issued to the Applicant for the period of one year commencing on May 15th, 1944, in renewal of the said Licence Number C.T.C. (A.T.) 86.

J. A. CROSS,
Chief Commissioner.

ORDER No. 64750

In the matter of the application of Canadian Pacific Air Lines, Limited, hereinafter called the "Applicant", under Section 13 of The Transport Act, 1938, for a licence to transport passengers and/or goods by air between Chamouchouane Lake, Chigobiche Lake, Dolbeau, Lac aux Dorés, Lake Bourdeau, Lake Chibougamau, Mistassini, Nikabau Lake, Opemiska Lake, Roberval, Rush Lake, St. Félicien and Wakonichi Lake, Quebec.

File No. 42007·34·15

THURSDAY, the 20th day of April, A.D. 1944.

J. A. CROSS, K.C., *Chief Commissioner.*

HUGH WARDROPE, *Assistant Chief Commissioner.*

G. A. STONE, *Commissioner.*

F. M. MACPHERSON, *Commissioner.*

Whereas, in pursuance of Order No. 63562, dated May 12, 1943, Licence Number C.T.C. (A.T.) 87 was issued to the Applicant for the period of one year commencing on May 15, 1943.

Therefore it is ordered: That a licence be issued to the Applicant for the period of one year commencing on May 15, 1944 in renewal of the said Licence Number C.T.C. (A.T.) 87.

J. A. CROSS,
Chief Commissioner.

ORDER No. 64742

In the matter of the applications of the Canadian National Railways and the Canadian Pacific Railway Company, hereinafter called the "Applicants", for permission to publish, on short notice, a rate of \$2.70 per net ton on bituminous coal from Toronto, Ontario, to Shawinigan Falls, Quebec.

File Nos. 27612-290 and 27612-292

TUESDAY, the 25th day of April, A.D. 1944.

J. A. CROSS, K.C., *Chief Commissioner.*

HUGH WARDROPE, *Assistant Chief Commissioner.*

Whereas the Applicants advise that a steamer loaded with bituminous coal destined Three Rivers, Quebec, for furtherance to Shawinigan Falls, Quebec, has been required to discharge the cargo at Toronto, Ontario, owing to a temporary break in the Lachine Canal, and that the coal is urgently required at Shawinigan Falls—

It is ordered: That the Applicants be, and they are hereby, permitted to publish the said rate effective April 26, 1944.

J. A. CROSS,
Chief Commissioner.

GENERAL ORDER No. 662

In the matter of General Order No. 639, dated the 29th of January, 1943, amending the Regulations for the Transportation of Explosives and Other Dangerous Articles by Freight so as to permit the use of steel cylinders for the shipment of compressed air.

File No. 1717.88.6

TUESDAY, the 11th day of April, A.D. 1944.

J. A. CROSS, K.C., *Chief Commissioner.*

HUGH WARDROPE, *Assistant Chief Commissioner.*

J. A. STONEMAN, *Commissioner.*

G. A. STONE, *Commissioner.*

F. M. MACPHERSON, *Commissioner.*

Upon the recommendation of the Director of Operation of the Board—

It is ordered: That the said General Order No. 639, dated the 29th day of January, 1943, be, and it is hereby, rescinded.

J. A. CROSS,
Chief Commissioner.

ACCIDENTS REPORTED TO THE OPERATING DEPARTMENT, BOARD OF TRANSPORT COMMISSIONERS FOR CANADA, MARCH, 1944

Railway Accidents	169 with 17 killed and 190 injured
Level Crossing Accidents	29 with 14 killed and 34 injured
Totals	198 with 31 killed and 224 injured

	Killed	Injured
Passengers	1	32
Employees	7	151
Others	23	41
Total	31	224

DETAILS OF ACCIDENTS AT HIGHWAY CROSSINGS

Accidents K. I. NEW BRUNSWICK

1 - 2 Auto truck ran into side of train. Licence N.B.C6173.

QUEBEC

1 - 1 Automobile drove onto crossing in front of approaching train and was struck. Licence Que. 43-756.

1 1 3 Automobile drove onto crossing in front of approaching train and was struck. Licence Que. 8-842.

ONTARIO

1 - 1 Auto truck drove onto crossing in front of approaching train and was struck. Licence Ont. 5875-C.

1 - 1 Auto truck drove onto crossing in front of approaching train and was struck. Licence Ont. 931-C.

1 1 - Automobile stalled on crossing and was struck by train. Licence Ont. 94-R-72.

1 - 1 Automobile ran into side of train. Licence Ont. 441-K-9.

1 1 1 Automobile drove onto crossing in front of approaching train and was struck. Licence Ont. 1-R-945.

1 2 - Automobile drove onto crossing in front of approaching train and was struck. Licence Ont. 3-S-180.

1 - 1 Automobile drove onto crossing in front of approaching train and was struck. Licence Ont. 21-N-68.

1 1 - Automobile drove onto crossing in front of approaching train and was struck. Licence Ont. 63-J-39.

1 - 2 Automobile drove onto crossing in front of approaching train and was struck. Licence Ont. 712-F-4.

1 - 1 Automobile drove onto crossing in front of approaching train and was struck. Licence Ont. 88-K-42.

1 - 1 Automobile ran into side of train. Licence Ont. 123-P-4.

1 1 - Auto truck drove onto crossing in front of approaching train and was struck. Licence Ont. 87509-C.

1 - 1 Engine grazed side of standing truck, parked foul of main line. Licence not given.

1 - 2 Automobile drove onto crossing in front of approaching train and was struck. Licence Ont. 3-V-742.

1 1 - Automobile drove onto crossing in front of approaching train and was struck. Licence Ont. 33-F-59.

1 3 - Auto truck drove onto crossing in front of approaching train and was struck. Licence Ont. 30303-C.

1 1 - Motor Cycle ran into side of train. Licence Ont. 3090.

MANITOBA

1 - 4 Automobile struck Track Motor Car. Licence Man. 71-604.

Accidents K. I.

SASKATCHEWAN

1	-	1	Automobile ran into side of train. Licence Sask. 30-640.
1	1	2	Automobile drove onto crossing in front of approaching train and was struck. Licence Sask. 60-783.
1	-	2	Automobile drove onto crossing in front of approaching train and was struck. Licence Sask. F-8664.

ALBERTA

1	1	-	Automobile drove onto crossing in front of approaching train and was struck. Licence Alta. 65-672.
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BRITISH COLUMBIA

1	-	1	Auto truck drove onto crossing in front of approaching train and was struck. Licence B.C. CZ-307.
1	-	1	Pedestrian walked in front of approaching train and was struck.
1	-	1	Auto truck drove onto crossing in front of approaching train and was struck. Licence B.C. C-5-171.
1	-	1	Automobile ran into side of train. Licence B.C. 23559.

Of the 29 accidents at highway crossings, 23 occurred at Unprotected Crossings and 6 at Protected Crossings. Seventeen of the Accidents occurred after Sunrise and twelve after Sunset.

May 6, 1944

SUMMARY OF ORDERS ISSUED BY THE BOARD

- 64702 Apr. 12—Authorizing issuing of Licence to Northeast Airlines, Inc., in renewal of Licence No. C.T.C. (A.T.) 17.
- 64703 Apr. 13—Approving tolls published in Tariff C.T.C. N.E. 5018, filed by the C.P.R. under Sec. 9 of the Maritime Freight Rates Act.
- 64704 Apr. 14—Approving tolls published in Tariff C.T.C. No. E.2526, filed by the C.N.R. under Sec. 3 of the Maritime Freight Rates Act.
- 64705 Apr. 14—Approving proposed relocation of unloading rack, pipe lines, etc., of Imperial Oil Limited near tracks of the C.P.R. at Weymouth, N.S.
- 64706 Apr. 14—Approving proposed location of unloading rack, pipe lines, etc., of Baker Bros., near the tracks of C.N.Rys. at Britannia Terrace, Ottawa, Ont.
- 64707 Apr. 12—Directing C.N.Rys. to install flashing lights and one bell at mileage 7.52 Harcourt Subd., N.B.
- 64708 Apr. 13—Declaring C.N.R. crossing of the public road immediately south of Hawkestone Station, Ont., protected to Board's satisfaction.
- 64709 Apr. 13—Approving location and details of C.N.Rys. proposed portable station at St. Wenceslas, Que.
- 64710 Apr. 14—Declaring C.P.R. crossing second west of Readlyn Station, Sask., protected to Board's satisfaction.
- 64711 Apr. 15—Approving proposed location and details of C.N.Rys. standard portable shelter at Corinth, Ont.
- 64712 Apr. 15—Dismissing application on behalf of residents of Chester, N.S., and district, for highway crossing over C.N.R. at Goat Lake, N.S.
- 64713 Apr. 15—Recommending to the Governor in Council for sanction agreements between the C.P.R. and the N.Y. Central Railroad Co. for the joint use of certain facilities in the City of Ottawa.
- 64714 Apr. 17—Approving Memorandum of Basis of Settlement for Long Distance Messages between the British Columbia Telephone Co. and the Alberta Government Telephones.
- 64715 Apr. 17—Approving agreement between the British Columbia Telephone Co. and Chilliwack Telephones Limited.
- 64716 Apr. 17—Approving agreement between the British Columbia Telephone Co. and the Kootenay Telephone Company Limited.
- 64717 Apr. 17—Approving agreement between the British Columbia Telephone Co. and the Mission Telephone Company Limited.
- 64718 Apr. 17—Approving agreement between the British Columbia Telephone Company and the Okanagan Telephone Co.
- 64719 Apr. 17—Approving agreement between The Pacific Telephone and Telegraph Co. and the British Columbia Telephone Company.
- 64720 Apr. 17—Approving Memorandum of Basis of Settlement for Long Distance Messages between the British Columbia Telephone Company and the Government Telegraph Service.
- 64721 Apr. 17—Approving Memorandum of Basis of Settlement for Long Distance Messages between the British Columbia Telephone Company and the Point Roberts and Gulf Telephone Company.
- 64722 Apr. 17—Approving Memorandum of Basis of Settlement for Long Distance Messages between the British Columbia Telephone Company and the North-West Telephone Company.
- 64723 Apr. 17—Approving proposed location of pump and motor house, etc., of Pacific Oil & Refinery Co., of Alta., Ltd., near tracks of C.P.R. at Lexion, Alta.
- 64724 Apr. 17—Declaring C.P.R. crossing of highway, being first crossing south of Loreburn Station, Sask., protected to Board's satisfaction.
- 64725 Apr. 19—Approving plan No. 1354-1, dated Jan. 18, 1944, of The Toronto, Hamilton & Buffalo Railway Co., to equip its home signals Nos. 6 and 11 at Diltz, Ont.
- 64726 Apr. 19—Approving plan No. 1356-1, dated Jan. 18, 1944, of The Toronto, Hamilton & Buffalo Railway Co., to equip its home signals Nos. 13 and 27 near Diltz, Ont.
- 64727 Apr. 19—Approving plan No. 1359-1, dated Jan. 18, 1944, of The Toronto, Hamilton, & Buffalo Railway Co., to equip its home signal No. 5 at Dunnville, Ont.

- 64728 Apr. 20—Declaring C.N.R. crossing of Mutual Street, Ingersoll, Ont., protected to Board's satisfaction.
- 64729 Apr. 19—Approving clearances at proposed cinder drainage disposal plant at Sherbrooke, Que.
- 64730 Apr. 19—Authorizing C.P.R. to amend its tariffs, C.T.C. Nos. E.4523, 4939, 4872, 4943, 4996, 4429 and 4711, effective on one day's notice.
- 64731 Apr. 19—Authorizing C.N.R. to use and operate bridge at mileage 67.2 Drumheller Subd., Alta.
- 64732 Apr. 19—Authorizing C.N.R. to use and operate bridge at mileage 67.6 Drumheller Subd., Alta.
- 64733 Apr. 19—Authorizing C.N.R. to use and operate bridge at mileage 63.2 Drumheller Subd., Alta.
- 64734 Apr. 19—Authorizing C.N.R. to use and operate bridge at mileage 63.3 Drumheller Subd., Alta.
- 64735 Apr. 19—Authorizing C.N.R. to use and operate bridge across the Rosebud River at mileage 64.2 Drumheller Subd., Alta.
- 64736 Apr. 19—Authorizing C.N.R. to use and operate bridge at mileage 62.4 Drumheller Subd., Alta.
- 64737 Apr. 20—Declaring C.P.R. crossing first west of Vaudreuil Yard, Que., protected to Board's satisfaction.
- 64738 Apr. 20—Declaring New York Central Railroad crossing of McLeod Road, Niagara Falls, Ont., protected to Board's satisfaction.
- 64739 Apr. 20—Declaring Pere Marquette Railway crossing just south of the South Yard limit board, Twp. of Sarnia, Ont., protected to Board's satisfaction.
- 64740 April 20—Declaring C.P.R. crossing of St. George street, London, Ont. protected to Board's satisfaction; speed limitation of ten miles per hour to be maintained.
- 64741. April 17—Authorizing agents Doe, Curlett, Jones and Kipp, to publish amendments to their tariffs *re* rates on fish livers.
- 64742. April 25—Authorizing C.N.R. and C.P.R. to publish rate on bituminous coal from Toronto to Shawinigan Falls, Que.
- 64743. April 20—Authorizing issuing of licence to Canadian Pacific Air Lines, Limited, in renewal of Licence No. C.T.C. (A.T.) 80.
- 64744. April 20—Authorizing issuing of licence to Canadian Pacific Air Lines, Limited, in renewal of licence No. C.T.C. (A.T.) 81.
- 64745. April 20—Authorizing issuing of licence to Canadian Pacific Air Lines, Limited, in renewal of Licence No. C.T.C. (A.T.) 82.
- 64746. April 20—Authorizing issuing of licence to Canadian Pacific Air Lines, Limited, in renewal of Licence No. C.T.C. (A.T.) 83.
- 64747. April 20—Authorizing issuing of licence to Canadian Pacific Air Lines, Limited, in renewal of Licence No. C.T.C. (A.T.) 84.
- 64748. April 20—Authorizing issuing of licence to Canadian Pacific Air Lines, Limited, in renewal of Licence No. C.T.C. (A.T.) 85.
- 64749 April 20—Authorizing issuing of licence to Canadian Pacific Air Lines, Limited, in renewal of Licence No. C.T.C. (A.T.) 86.
- 64750. April 20—Authorizing issuing of licence to Canadian Pacific Air Lines, Limited, in renewal of Licence No. C.T.C. (A.T.) 87.
- 64751. April 22—Approving under Maritime Freight Rates Act tolls published in tariffs filed by the Dominion Atlantic Railway Company under Sec. 9.
- 64752. April 24—Authorizing R.M. of Round Hill No. 467, Sask. to construct public crossing over tracks of C.P.R. in the NE $\frac{1}{4}$ -Sec. 11, Twp. 46, Rge. 13, W.3M.
- 64753. April 25—Approving clearances of platform of General Steel Ware, Ltd., Toronto, Ont. (C.N. Rys.).
- 64754. April 27—Directing C.P.R. to install a wigwag signal at crossing of Vansittart St., Woodstock, Ont.
- 64755. April 26—Declaring C.N.R. crossing of Lauzon road, 2.54 miles west of Tecumseh, Ont., protected to Board's satisfaction.
- 64756. April 26—Extending time for installation of flashing light and bell at King Street crossing, Thorndale, Ont. (C.N.R.).
- 64757. April 26—Relieving C.N.R. from maintaining fences on south side of tracks, Brampton Subd., Ont.
- 64758. April 26—Approving under Maritime Freight Rates Act tolls published in tariffs filed by the Canadian Freight Association under Secs. 3 and 9.

- 64759. April 26—Declaring C.N.R. crossing of Olive ave., Oshawa, Ont., protected to Board's satisfaction; present speed limitation of ten miles per hour to be maintained.
- 64760. April 26—Declaring Essex Terminal Railway crossing of Drouillard road, Windsor, Ont., protected to Board's satisfaction.
- 64761. April 26—Authorizing C.N.R. to reconstruct bridge at mileage 68.3 Sudbury Subd., Ont.
- 64762. April 26—Authorizing C.N.R. to reconstruct bridge at mileage 16.63 Durham Subd., Ont.
- 64763. April 27—Authorizing C.P.R. to construct branch line of railway to serve Dominion Oil Co. Ltd., at mileage 76.83 Taber Subd., Alta.
- 64764. April 27—Approving Supplement No. 2, to agreement between the Bell Telephone Company of Canada and La Compagnie de Téléphone de Kamouraska
- 64765. April 26—Approving clearances of C.P.R. icing room and platform at Penticton, B.C.
- 64766. April 27—Authorizing C.N.R. to re-drive trestle bridge at mileage 73.9 Yale Subd., B.C.
- 64767. Apr. 28—Approving plan for the construction of subway at crossing of Berri street and C.N. Rys., mileage 2.09 C.N. Rys. Eastern Junction—Bout de l'Île Line.
- 64768. April 28—Approving plan for the construction of subway at crossing of St. Lawrence Boulevard and C.N. Rys., mileage 1.76 C.N. Rys. Eastern Junction—Bout de l'Île Line.
- 64769. April 28—Approving plan for the construction of subway at crossing of Lille street and C.N. Rys., mileage 3.67 C.N. Rys. Eastern Junction—Bout de l'Île Line.
- 64770—April 28—Approving plan for the construction of subway at crossing of Lajeunesse street and C.N. Rys., mileage 2.14 C.N. Rys. Eastern Junction—Bout de l'Île Line.
- 64771. April 29—Authorizing C.N.R. to construct subway at crossing of Sherbrooke street and C.N. Rys., Pointe aux Trembles, Que.
- 64772. April 24—Approving under Maritime Freight Rates Act tolls published in tariffs filed by C.N.R. under Sec. 3.
- 64773. April 27—Authorizing C.N.R. to install additional track circuit on passing track at mileage 37.77 Dundas Subd., Princeton, Ont.
- 64774. May 1—Declaring British Columbia Electric Railway crossing of Oak street, Vancouver, protected to Board's satisfaction.
- 64775. May 1—Declaring C.P.R. crossing of Kennedy road, mileage 109.42 Cascade Subd., B.C., protected to Board's satisfaction.
- 64776. May 1—Approving proposed installation of additional storage tank etc. of Imperial Oil Ltd. near Northern Alberta Rlys. at Jarvie, Alta.
- 64777. May 1—Declaring C.N.R. crossing of Mountain road, first west of Berry Mills Station, N.B., protected to Board's satisfaction.
- 64778. May 1—Approving proposed installation of additional storage tank etc. of Imperial Oil Ltd. near Northern Alberta Rys. at High Prairie, Alta.
- 64779. May 1—Declaring C.P.R. crossing of Quilchena avenue, Merritt, B.C., protected to Board's satisfaction.
- 64780. May 1—Amending Order No. 64705 approving plan showing proposed relocation of unloading rack, etc. of Imperial Oil Ltd., Weymouth, N.S. (Dominion Atlantic Rly.).
- 64781. May 1—Authorizing J. P. Haynes, agent, Pacific Freight Tariff Bureau to amend his tariff C.T.C. No. 160 on short notice.
- 64782. May 3—Declaring C.P.R. crossing of Kyle street in the city of Port Moody, B.C., mile 115.95 Cascade Subd., protected to Board's satisfaction.
- 64783. May 2—Amending Order No. 64681, dated 6th day of April, 1944, to correct an error. (C.N.R.)

The Board of Transport Commissioners for Canada

Judgments, Orders, Regulations and Rulings

Vol. XXXIV

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No. 5

This publication is issued fortnightly, on the 1st and 15th of each month. Annual subscription, \$3.00; single numbers, 20 cents; in quantities, 25 per cent discount. Remittances should be made to the King's Printer, Ottawa, by postal money order, express order or accepted cheque. The use of currency for this purpose is contrary to the advice of the postal authorities and entails a measure of risk. Postage stamps, foreign money or uncertified cheques will not be accepted. No extra charge is made for postage on documents forwarded to points in Canada and in the United States, but cost of postage is added to the selling price when documents are mailed to other countries. Early application should be made for copies in quantities. Subscriptions should be sent, in every case, to the King's Printer, Ottawa.

ORDER No. 64781

In the matter of the application of J. P. Haynes, Agent, Pacific Freight Tariff Bureau, hereinafter called the "Applicant", for authority to amend his tariff C.T.C. No. 160 on short notice.

File No. 27612.296

WEDNESDAY, the 3rd day of May, A.D. 1944.

HUGH WARDROPE, *Assistant Chief Commissioner.*

G. A. STONE, *Commissioner.*

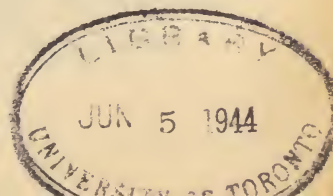
Whereas, by Investigation and Suspension Docket No. 5275 the Interstate Commerce Commission suspended increased rates on fish livers published in Item 1350-A of Supplement 3 to Applicant's Tariff C.T.C. No. 160,

And whereas such suspension has now been vacated,

It is ordered: That the Applicant be, and he is hereby, permitted to reinstate the provisions of the aforesaid item effective on one day's notice.

HUGH WARDROPE,

Assistant Chief Commissioner.



ORDER No. 64803

In the matter of the application of St. Lawrence Steamships Limited, hereinafter called the "Applicant" for a licence under Section 10 of The Transport Act, 1938.

File No. 42076.8

TUESDAY, the 9th day of May, A.D. 1944.

J. A. CROSS, K.C., *Chief Commissioner.*

HUGH WARDROPE, *Assistant Chief Commissioner.*

J. A. STONEMAN, *Commissioner.*

F. M. MACPHERSON, *Commissioner.*

Upon the report and recommendation of the Assistant Director, Traffic Department of the Board—

It is ordered: That Licence Number C.T.C. (W.T.) 114 be issued to the Applicant for the period of one year commencing on the 15th day of January, 1944, licensing the following ships, namely:—

Vessel Name	Official Registry No.	Gross Tonnage
<i>Algonquins</i>	161515	2,100
<i>Sioux</i>	161516	2,100
<i>Cheyenne</i>	149498	1,938

to transport goods by water between all ports or places in Canada on Lakes Ontario, Erie, Huron (including Georgian Bay), and Superior, and their connecting waters, including the St. Lawrence River and its tributaries as far seaward as the west end of the Island of Orleans.

J. A. CROSS,

Chief Commissioner.

ORDER No. 64806

In the matter of the application of Canadian Airways Limited, hereinafter called the "Applicant", under Section 13 of The Transport Act, 1938, for a licence to transport passengers and/or goods by air between Winnipeg and/or Lac du Bonnet, Berens River, Norway House, Gods Lake, in the Province of Manitoba; Sachigo, in the Province of Ontario; Island Lake, in the Province of Manitoba; Sandy Lake, Favourable Lake, Deer Lake, in the Province of Ontario; and Little Grand Rapids, in the Province of Manitoba.

File No. 42007.4.13

TUESDAY, the 9th day of May, A.D. 1944.

J. A. CROSS, K.C., *Chief Commissioner.*

HUGH WARDROPE, *Assistant Chief Commissioner.*

J. A. STONEMAN, *Commissioner.*

G. A. STONE, *Commissioner.*

F. M. MACPHERSON, *Commissioner.*

Whereas, in pursuance of Order No. 63619, dated June 1, 1943, a licence was issued to the Applicant in renewal of Licence Number C.T.C. (A.T.) 26 for the period of one year commencing on June 7, 1943—

Therefore it is ordered: That a licence be issued to the Applicant for the period of one year commencing on June 7, 1944, in renewal of the said Licence Number C.T.C. (A.T.) 26.

J. A. CROSS,

Chief Commissioner.

ORDER No. 64807

In the matter of the application of Canadian Airways Limited, hereinafter called the "Applicant", under Section 13 of The Transport Act, 1938, for a licence to transport passengers and/or goods by air between Sioux Lookout and/or Hudson, Goldpines, Red Lake, Jackson Manion, Swain Post, Casummit Lake, Uchi Lake and/or Lost Bay, in the Province of Ontario.

File No. 42007.4.6

TUESDAY, the 9th day of May, A.D. 1944.

J. A. CROSS, K.C., *Chief Commissioner.*
 HUGH WARDROPE, *Assistant Chief Commissioner.*
 J. A. STONEMAN, *Commissioner.*
 G. A. STONE, *Commissioner.*
 F. M. MACPHERSON, *Commissioner.*

Whereas, in pursuance of Order No. 63612, dated June 1, 1943, a licence was issued to the Applicant in renewal of Licence Number C.T.C. (A.T.) 19 for the period of one year commencing on June 5, 1943—

Therefore it is ordered: That a licence be issued to the Applicant for the period of one year commencing on June 5, 1944, in renewal of the said Licence Number C.T.C. (A.T.) 19.

J. A. CROSS,
Chief Commissioner.

ORDER No. 64808

In the matter of the application of Canadian Airways Limited, hereinafter called the "Applicant", under Section 13 of The Transport Act, 1938, for a licence to transport passengers and/or goods by air between Sioux Lookout and/or Hudson, Goldpines, Madsen, Cole, Golden Arm, McKenzie Island, Red Lake, Uchi Lake and/or Lost Bay, in the Province of Ontario.

File No. 42007.4.7

TUESDAY, the 9th day of May, A.D. 1944.

J. A. CROSS, K.C., *Chief Commissioner.*
 HUGH WARDROPE, *Assistant Chief Commissioner.*
 J. A. STONEMAN, *Commissioner.*
 G. A. STONE, *Commissioner.*
 F. M. MACPHERSON, *Commissioner.*

Whereas, in pursuance of Order No. 63613, dated June 1, 1943, a licence was issued to the Applicant in renewal of Licence Number C.T.C. (A.T.) 21 for the period of one year commencing on June 7, 1943—

Therefore it is ordered: That a licence be issued to the Applicant for the period of one year commencing on June 7, 1944, in renewal of the said Licence Number C.T.C. (A.T.) 21.

J. A. CROSS,
Chief Commissioner.

ORDER No. 64809

In the matter of the application of Canadian Airways Limited, hereinafter called the "Applicant", under Section 13 of The Transport Act, 1938, for a licence to transport passengers and/or goods by air between Kenora, Witch Bay, Whitefish Bay, Straw Lake, Rowan Lake, and Populus Lake, in the Province of Ontario.

File No. 42007.4.9

TUESDAY, the 9th day of May, A.D. 1944.

J. A. CROSS, K.C., *Chief Commissioner.*HUGH WARDROPE, *Assistant Chief Commissioner.*J. A. STONEMAN, *Commissioner.*G. A. STONE, *Commissioner.*F. M. MACPHERSON, *Commissioner.*

Whereas, in pursuance of Order No. 63615, dated June 1, 1943, a licence was issued to the Applicant in renewal of Licence Number C.T.C. (A.T.) 23 for the period of one year commencing on June 7, 1943—

Therefore it is ordered: That a licence be issued to the Applicant for the period of one year commencing on June 7, 1944, in renewal of the said Licence Number C.T.C. (A.T.) 23.

J. A. CROSS,

Chief Commissioner.

ORDER No. 64804

In the matter of the application of the Union Transit Company Limited, hereinafter called the "Applicant", for a licence under Section 10 of The Transport Act, 1938.

File No. 42076.25

WEDNESDAY, the 10th day of May, A.D. 1944.

J. A. CROSS, K.C., *Chief Commissioner.*HUGH WARDROPE, *Assistant Chief Commissioner.*J. A. STONEMAN, *Commissioner.*F. M. MACPHERSON, *Commissioner.*

Upon the report and recommendation of the Assistant Director, Traffic Department of the Board—

It is ordered: That Licence No. C.T.C. (W.T.) 115 be issued to the Applicant for the period of one year commencing on the 15th of January, 1944, licensing the following ship, namely:—

Vessel Name	Official Registry No.	Gross Tonnage
<i>William Schupp</i>	160713	1,779

to transport goods by water between all ports or places in Canada on Lakes Ontario, Erie, Huron (including Georgian Bay), and Superior, and their connecting waters, including the St. Lawrence River and its tributaries as far seaward as the west end of the Island of Orleans.

J. A. CROSS,

Chief Commissioner.

ORDER No. 64805

In the matter of the application of Canadian Airways Limited, hereinafter called the "Applicant", under Section 13 of The Transport Act, 1938, for a licence to transport passengers and/or goods by air between Kenora, Minaki, McKenzie Island, Golden Arm, Cole, Madsen, and Red Lake, in the Province of Ontario.

File No. 42007.4.8

WEDNESDAY, the 10th day of May, A.D. 1944.

J. A. CROSS, K.C., *Chief Commissioner.*

HUGH WARDROPE, *Assistant Chief Commissioner.*

J. A. STONEMAN, *Commissioner.*

G. A. STONE, *Commissioner.*

F. M. MACPHERSON, *Commissioner.*

Whereas, in pursuance of Order No. 63614, dated June 1, 1943, a licence was issued to the Applicant in renewal of Licence Number C.T.C. (A.T.) 22 for the period of one year commencing on June 7, 1943—

Therefore it is ordered: That a licence be issued to the Applicant for the period of one year commencing on June 7, 1944, in renewal of the said Licence Number C.T.C. (A.T.) 22.

J. A. CROSS,

Chief Commissioner.

ORDER No. 64810

In the matter of the application of Canadian Airways Limited, hereinafter called the "Applicant", under Section 13 of The Transport Act, 1938, for a licence to transport passengers and/or goods by air between Edmonton, Lac La Biche, McMurray, Bitumount, Chipewyan, Fitzgerald, in the Province of Alberta; Fort Smith, Rocher River, Taltson River, Resolution, Hay River, Providence, Simpson, Liard, in the Northwest Territories; Nelson Forks, Fort Nelson, in the Province of British Columbia; and Wrigley, Norman, Good Hope, Arctic Red River, McPherson, Aklavik, in the Northwest Territories.

File No. 42007.4.15

WEDNESDAY, the 10th day of May, A.D. 1944.

J. A. CROSS, K.C., *Chief Commissioner.*

HUGH WARDROPE, *Assistant Chief Commissioner.*

J. A. STONEMAN, *Commissioner.*

G. A. STONE, *Commissioner.*

F. M. MACPHERSON, *Commissioner.*

Whereas, in pursuance of Order No 63620, dated June 1, 1943, a licence was issued to the Applicant in renewal of Licence Number C.T.C. (A.T.) 27 for the period of one year commencing on June 7, 1943—

Therefore it is ordered: That a licence be issued to the Applicant for the period of one year commencing on June 7, 1944, in renewal of the said Licence Number C.T.C. (A.T.) 27.

J. A. CROSS,

Chief Commissioner.

ORDER No. 64811

In the matter of the application of Canadian Airways Limited, hereinafter called the "Applicant" under Section 13 of The Transport Act, 1938, for a licence to transport passengers and/or goods by air between Edmonton, Lac La Biche, South Wabiskaw Lake, North Wabiskaw Lake, Waterways, McMurray, Embarras Portage, Chipewyan, in the Province of Alberta; Goldfields, in the Province of Saskatchewan; Fitzgerald, in the Province of Alberta; and Fort Smith Resolution, Outpost Island, Yellowknife, Gordon Lake, Rae, Cameron Bay (Port Radium) and/or Labine Point, Coppermine, in the Northwest Territories.

File No. 42007.4.16

WEDNESDAY, the 10th day of May, A.D. 1944.

J. A. CROSS, K.C., *Chief Commissioner.*HUGH WARDROPE, *Assistant Chief Commissioner.*G. A. STONE, *Commissioner.*F. M. MACPHERSON, *Commissioner.*

Whereas, in pursuance of Order No. 63621, dated June 1, 1943, a licence was issued to the Applicant in renewal of Licence Number C.T.C. (A.T.) 28 for the period of one year commencing on June 7, 1943—

Therefore it is ordered: That a licence be issued to the Applicant for the period of one year commencing on June 7, 1944, in renewal of the said Licence Number C.T.C. (A.T.) 28.

J. A. CROSS,
Chief Commissioner.

ORDER No. 64813

In the matter of the application of Canadian Airways Limited, hereinafter called the "Applicant", under Section 13 of The Transport Act, 1938, for a licence to transport passengers and/or goods by air between Winnipeg and/or Lac Du Bonnet, Maskwa, Bird Lake, Diana, Beresford Lake, Wadhope, Halfway Lake, Wallace Lake, and Bissett, in the Province of Manitoba.

File No. 42007.4.12

WEDNESDAY, the 10th day of May, A.D. 1944.

J. A. CROSS, K.C., *Chief Commissioner.*HUGH WARDROPE, *Assistant Chief Commissioner.*J. A. STONEMAN, *Commissioner.*G. A. STONE, *Commissioner.*F. M. MACPHERSON, *Commissioner.*

Whereas, in pursuance of Order No. 63618, dated June 1, 1943, a licence was issued to the Applicant in renewal of Licence Number C.T.C. (A.T.) 25 for the period of one year commencing on June 7, 1943—

Therefore it is ordered: That a licence be issued to the Applicant for the period of one year commencing on June 7, 1944, in renewal of the said Licence Number C.T.C. (A.T.) 25.

J. A. CROSS,
Chief Commissioner.

ORDER No. 64819

In the matter of the application of Canadian Airways Limited, hereinafter called the "Applicant", under Section 13 of The Transport Act, 1938, for a licence to transport passengers and/or goods by air between Ilford, Oxford House, Knee Lake, Gods Lake, Cross Lake, Norway House, and Island Lake, in the Province of Manitoba; and Sachigo, in the Province of Ontario.

File No. 42007.4.10

WEDNESDAY, the 10th day of May, A.D. 1944.

J. A. CROSS, K.C., *Chief Commissioner.*HUGH WARDROPE, *Assistant Chief Commissioner.*J. A. STONEMAN, *Commissioner.*G. A. STONE, *Commissioner.*F. M. MACPHERSON, *Commissioner.*

Whereas, in pursuance of Order No. 63616, dated June 1, 1943, a licence was issued to the Applicant in renewal of Licence Number C.T.C. (A.T.) 20 for the period of one year commencing on June 6, 1943—

Therefore it is ordered: That a licence be issued to the Applicant for the period of one year commencing on June 6, 1944, in renewal of the said Licence Number C.T.C. (A.T.) 20.

J. A. CROSS,
Chief Commissioner.

ORDER No. 64820

In the matter of the application of Canadian Airways Limited, hereinafter called the "Applicant", under Section 13 of The Transport Act, 1938, for a licence to transport passengers and/or goods by air between Winnipeg and/or Lac du Bonnet, Beresford Lake, in the Province of Manitoba; and Red Lake, Madsen, Cole, Golden Arm, McKenzie Island, in the Province of Ontario.

File No. 42007.4.11

WEDNESDAY, the 10th day of May, A.D. 1944.

J. A. CROSS, K.C., *Chief Commissioner.*HUGH WARDROPE, *Assistant Chief Commissioner.*J. A. STONEMAN, *Commissioner.*G. A. STONE, *Commissioner.*F. M. MACPHERSON, *Commissioner.*

Whereas, in pursuance of Order No. 63617, dated June 1, 1943, a licence was issued to the Applicant in renewal of Licence Number C.T.C. (A.T.) 24, for the period of one year commencing on June 7, 1943—

Therefore it is ordered: That a licence be issued to the Applicant for the period of one year commencing on June 7, 1944, in renewal of the said Licence Number C.T.C. (A.T.) 24.

J. A. CROSS,
Chief Commissioner.

ORDER No. 64821

In the matter of the application of the Canadian Pacific Railway Company, hereinafter called the "Applicant Company", for permission to amend its tariffs C.T.C. Nos. 4533, 4939, 4872, 4943, 4996, 4429 and 4711 on short notice.

File No. 27612.292

FRIDAY, the 12th day of May, A.D. 1944.

J. A. CROSS, K.C., *Chief Commissioner.*

HUGH WARDROPE, *Assistant Chief Commissioner.*

J. A. STONEMAN, *Commissioner.*

Whereas, by First Revised Service Order No. 197, the Interstate Commerce Commission has prohibited the use of freight cars or refrigerator cars for the movement of potatoes, effective May 9, 1944, as therein mentioned;

And whereas the Applicant Company desires to suspend the operation of all rules, regulations or charges contained in the tariffs above mentioned insofar as they conflict with the provisions of said First Revised Service Order No. 197;

It is ordered: That the Applicant Company be, and it is hereby, permitted to amend the said tariffs as aforesaid, effective May 13, 1944.

J. A. CROSS,

Chief Commissioner.

ORDER No. 64851

In the matter of the application of American Airlines, Inc., hereinafter called the "Applicant," under Section 13 of The Transport Act, 1938, for a licence to transport by air passengers and/or goods between Windsor, Ontario, and points on its Route No. 7 in the United States.

File 42007.33.1

TUESDAY, the 16th day of May, A.D. 1944.

J. A. CROSS, K.C., *Chief Commissioner.*

HUGH WARDROPE, *Assistant Chief Commissioner.*

J. A. STONEMAN, *Commissioner.*

G. A. STONE, *Commissioner.*

F. M. MACPHERSON, *Commissioner.*

Whereas, in pursuance of Order No. 63568, dated May 15th, 1943, Licence Number C.T.C. (A.T.) 75 was issued to the Applicant for the period of one year commencing on June 20th, 1943—

Therefore it is ordered: That licence be issued to the Applicant for the period of one year commencing on June 20th, 1944, in renewal of the said Licence Number C.T.C. (A.T.) 75.

J. A. CROSS,

Chief Commissioner.

SUMMARY OF ORDERS ISSUED BY THE BOARD

- 64784 May 3—Declaring C.P.R. crossing of Grigg Street, St. James, Man., protected to Board's satisfaction.
- 64785 May 3—Declaring Toronto, Hamilton & Buffalo Rly. crossing of Broadway Avenue, Hamilton, Ont., protected to Board's satisfaction.
- 64786 May 3—Declaring Midland Railway of Manitoba crossing of Isabel Street, Winnipeg, Man., protected to Board's satisfaction; speed limitation of five miles per hour to be maintained.
- 64787 May 4—Approving location of pipe lines, etc., of Imperial Oil Ltd., near Northern Alberta Rlys. at Wanham, Alta.
- 64788 May 4—Approving location of pipe lines, etc., of Imperial Oil Ltd., near Northern Alberta Rlys. at Waterways, Alta.
- 64789 May 4—Approving location of pipe lines, etc., of Imperial Oil Ltd., near Northern Alberta Rlys. at Grimshaw, Alta.
- 64790 May 4—Approving location of pipe lines, etc., of Imperial Oil Ltd., near Northern Alberta Rlys. at Manola, Alta.
- 64791 May 4—Authorizing C.P.R. to construct extension of trackage to serve its stock-yards at Claresholm, Alta.
- 64792 May 4—Directing C.P.R. to install two flashing light signals etc. at mileage 25.72 Port Burwell Subd., Straffordville, Ont.
- 64793 May 5—Declaring C.N.R. crossing second west of Lebreton Station, Sask., protected to Board's satisfaction.
- 64794 May 5—Directing Pere Marquette Railway Co. to install two flashing light signals at mileage 52.89 St. Thomas & Walkerville Subd., Coatsworth, Ont.
- 64795 May 6—Approving plan of subway at crossing of St. Hubert Street and C.N. Rys., mileage 2.36 C.N. Rys. Eastern Junction—Bout de l'Île Line.
- 64796 May 5—Declaring C.N.R. crossing of highway in the City of Regina, Sask., mileage 114.4 Lewvan Subd., protected to Board's satisfaction.
- 64797 May 8—Authorizing C.P.R. to construct branch line of railway to serve the Marathon Paper Mills of Canada Ltd. at mileage 63.5 Heron Bay Subd., Peninsula, Ont.
- 64798 May 8—Approving plan showing construction of subway at crossing of Montee St. Michel Road and C.N. Rlys. Eastern Junction—Bout de l'Île Line, Montreal, Que.
- 64799 May 5—Authorizing Toronto Harbour Commissioners to construct two cross-overs to serve Victory Mills Ltd. on south side of Fleet Street, Toronto, Ont., and approving clearances.
- 64800 May 8—Declaring C.N.R. crossing first west of Jones Station, N.B., protected to Board's satisfaction.
- 64801 May 9—Declaring C.N.R. crossing of Main Street, Atwood, Ont., protected to Board's satisfaction.
- 64802 May 8—Approving overhead and side clearances of siding serving Silverwood Dairies Limited, Lindsay, Ont. (C.N.R.)
- 64803 May 9—Authorizing issuing of Licence No. C.T.C. (W.T.) 114 to St. Lawrence Steamships Limited.
- 64804 May 10—Authorizing issuing of Licence C.T.C. (W.T.) 115 to Union Transit Company Limited.
- 64805 May 10—Authorizing issuing of Licence to Canadian Airways Limited, in renewal of Licence No. C.T.C. (A.T.) 22.
- 64806 May 9—Authorizing issuing of Licence to Canadian Airways Limited, in renewal of Licence No. C.T.C. (A.T.) 26.
- 64807 May 9—Authorizing issuing of Licence to Canadian Airways Limited, in renewal of Licence No. C.T.C. (A.T.) 19.
- 64808 May 9—Authorizing issuing of Licence to Canadian Airways Limited, in renewal of Licence No. C.T.C. (A.T.) 21.
- 64809 May 9—Authorizing issuing of Licence to Canadian Airways Limited, in renewal of Licence No. C.T.C. (A.T.) 23.
- 64810 May 10—Authorizing issuing of Licence to Canadian Airways Limited, in renewal of Licence No. C.T.C. (A.T.) 27.
- 64811 May 10—Authorizing issuing of Licence to Canadian Airways Limited, in renewal of Licence No. C.T.C. (A.T.) 28.

- 64812 May 9—Authorizing C.P.R. to construct branch line of railway to serve R. Beverley Robson at mileage 31·22 Goderich Subd., Guelph, Ont.
- 64813 May 10—Authorizing issuing of Licence to Canadian Airways Limited, in renewal of Licence No. C.T.C. (A.T.) 25.
- 64814 May 10—Declaring C.N.R. crossing of the highway in Johnstown, Ont., protected to Board's satisfaction.
- 64815 May 10—Declaring C.P.R. crossing third east of New Castle Bridge Station, N.B., protected to Board's satisfaction.
- 64816 May 9—Authorizing Michigan Central Railroad Co., the C.N. Rys. & the Wabash Railway Co. to operate their trains through interlocking plant at Canfield Junction, Ont.
- 64817 May 10—Approving Plan showing change in signals at crossing of Yale Road by C.N.R. Twp. of Chilliwack, B.C.
- 64818 May 10—Approving plan showing construction of bridge over C.P.R. track, Station 490 on C.N. Rys. Eastern Junction—Bout de l'Île Line.
- 64819 May 10—Authorizing issuing of Licence to Canadian Airways Limited, in renewal of Licence No. C.T.C. (A.T.) 20.
- 64820 May 10—Authorizing issuing of Licence to Canadian Airways Limited, in renewal of Licence No. C.T.C. (A.T.) 24.
- 64821 May 12—Authorizing C.P.R. to amend its tariffs C.T.C. Nos. 4533, 4939, 4872, 4943, 4996, 4429 and 4711 on short notice.
- 64822 May 15—Authorizing the Grand River Railway Co. to install automatic signals at crossing of the Grand River Rly. by C.N. Rys. near Forbes, Ont., mileage 0·5 Hespeler Subd.
- 64823 May 10—Declaring C.P.R. crossing of Main Street in the Town of Cobden, Ont., protected to Board's satisfaction.
- 64824 May 11—Authorizing the C.N.R. to remove the passenger shelter at Cannor Spur, B.C.
- 64825 May 11—Authorizing C.N. Rys. to construct spur in Alliance Industrial Division near Barlow Junction, Calgary, Alta.
- 64826 May 11—Approving under Maritime Freight Rates Act tolls published in tariffs filed by the C.N.R. under Section 3.
- 64827 May 9—Authorizing the C.P.R. to divert Selkirk Avenue and construct crossing across their right of way at mileage 0·98 Arborg Subd., Winnipeg, Man.
- 64828 May 11—Authorizing C.N.R. to construct siding to serve Moncton Cold and General Storage Ltd. across Mechanic St., Moncton, N.B.
- 64829 May 12—Approving under Maritime Freight Rates Act tolls published in tariffs filed by the Canadian Freight Association under Sections 3 and 9.
- 64830 May 12—Declaring C.N.R. crossing of the highway at mileage 13·59 Bonnyville Subd., Alta., protected to Board's satisfaction.
- 64831 May 13—Declaring C.P.R. crossing west of Jamieson Station, Ont., protected to Board's satisfaction.
- 64832 May 13—Approving overhead and side clearance of hoist with swinging boom to be attached to Bldg. No. 6 of Dept. of National Defence at Longue Pointe, Que. (C.N. Rys.)
- 64833 May 13—Authorizing C.P.R. to close crossing of road allowance 1·8 miles west of Hatton Creek Subd., Sask.
- 64834 May 13—Amending Order No. 64794 directing Pere Marquette Rly. Co. to install protective devices at crossing of highway west of Coatsworth Station, Ont.
- 64835 May 15—Approving location of pipe lines, etc., of Imperial Oil Limited near Northern Alberta Rlys. Co. at Faust, Alta.
- 64836 May 15—Approving location of pipe lines, etc., of Imperial Oil Limited near C.N. Rys. at Uxbridge, Ont.
- 64837 May 15—Approving location of pipe lines, etc., of Imperial Oil Limited near Northern Alberta Railways Co. at Rycroft, Alta.
- 64838 May 15—Approving location and details of C.N. Rys. waiting-room and freight shed at Nappan, N.S.
- 64839 May 15—Declaring Northern Alberta Rlys. crossing second east of Grand Prairie Station, Alta., protected to Board's satisfaction.
- 64840 May 15—Declaring London and Port Stanley Rly. crossing of Ottaway Ave., London, Ont., protected to Board's satisfaction; speed limitation of ten miles per hour to be maintained.
- 64841 May 15—Declaring New York Central Railroad crossing of highway about 6 miles east of Tillsonburg, Ont., protected to Board's satisfaction.

- 64842 May 15—Relieving C.P.R. from maintaining cattle guards at certain highways crossings on its Maniwaki Subd., Que.
- 64843 May 15—Relieving C.N.R. from maintaining fences along south side of their tracks between mileage 45·83 and 46·59 Brampton Subd., Ont.
- 64844 May 16—Authorizing C.N.R. to construct a public crossing at mileage 2·88 Winnipegosis Subd., Man.
- 64845 May 16—Approving location of pipe lines, etc., of Imperial Oil Limited near C.P.R. at Empress, Alta.
- 64846 May 16—Approving location of pipe lines, etc. of Union Oil Company of Canada Ltd. near C.P.R. at Agassiz, B.C.
- 64847 May 16—Approving location of pipe lines, etc., of Imperial Oil Limited near Northern Alberta Rlys. Co. at Beaverlodge, Alta.
- 64848 May 16—Approving under Maritime Freight Rates Act tolls published in tariffs filed by the Temiscouata Railway Co. under Sec. 9.
- 64849 May 16—Declaring New York Central Railroad crossing of Queen Street, Niagara Falls, Ont., protected to Board's satisfaction; present speed limitation of ten miles per hour to be maintained.
- 64850 May 16—Authorizing issuing of Licence to American Air Lines Inc., in renewal of Licence No. C.T.C. (A.T.) 74.
- 64851 May 16—Authorizing issuing of Licence to American Airlines Inc., in renewal of Licence No. C.T.C. (A.T.) 75.

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The Board of Transport Commissioners for Canada

Judgments, Orders, Regulations and Rulings

Vol. XXXIV

Ottawa, June 15, 1944

No. 6

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Application of Township of Nipigon for permission to install a second public highway crossing over the Canadian Pacific Railway in the Township of Nipigon, in the Province of Ontario, at Mileage 63.35 Nipigon Subdivision.

File No 43666

Heard at Nipigon, in the Province of Ontario, on Tuesday, May 2, 1944.

JUDGMENT

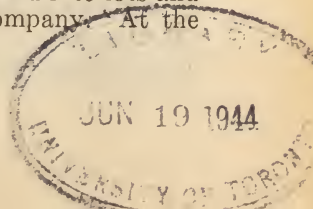
CROSS, *Chief Commissioner*:

This is an application by the Township of Nipigon, in the Province of Ontario, hereinafter called the Township, for an order granting it leave to construct a highway crossing across the railway of the Canadian Pacific Railway Company, hereinafter called the Company, in the Township of Nipigon, at mileage 63.35 Nipigon Subdivision, by extending and joining up First Street which is located on both the northwest and southeast sides of the railway and which on each side terminates at the right-of-way of the Company, as shown on a plan and profile of Front and First Streets prepared by Messrs. Phillips & Benner, dated Port Arthur, October 13, 1943, on file with the Board under file No. 43666.

Mr. F. D. Turville appeared for the Company and with him Mr. McCracken, General Superintendent, and Mr. J. R. Carswell, District Engineer of the Company. The Township was represented by Mr. H. Briand, Reeve, Mr. J. E. O'Neill and Mr. Charles Gerlach, Councillors, and Mr. W. L. Wade, Clerk and Treasurer of the Township.

Title to the right of way and station ground was obtained and is held by the Company from the Governor and Company of Adventurers of England trading into Hudson's Bay, commonly called the Hudson's Bay Company, under deed dated the 27th day of March, 1888.

A portion of the area now comprised in the Township, on each side of the property of the Company was in or about the year 1909 subdivided into lots and blocks and put on the market for sale by Hudson's Bay Company. At the



time of the laying out of the townsite, so far as is shown by the evidence, no provision was made for any street or highway crossing over the railway other than the existing crossing. Title to the land comprised in the right of way and station ground had previously been conveyed by Hudson's Bay Company to the Railway Company.

The subdivided portion of the Township, while not organized as a separate municipality, is frequently spoken of as the Village of Nipigon, although in fact it is a portion of the Township and under the administration of the council of the Township.

Upon the application of the Municipality of the Township of Nipigon the Board of Railway Commissioners for Canada, by Order No. 38810, dated March 4, 1927, authorized the applicant, at its own expense, to construct and maintain a highway crossing over the tracks of the Canadian Pacific Railway Company in Nipigon, in the Province of Ontario, at mileage 63.0 as shown on the plan and profile dated November 3, 1926, on file with the Board under file No. 35082. This crossing was duly constructed and is the only highway crossing over the tracks of the Railway in the Village of Nipigon. It appears that a farm crossing had existed at this point for some years prior to the making of said Order No. 38810. While in Nipigon the Board and its Chief Engineer, in company with representatives of the Township and the Railway, inspected this crossing. It is a good grade level crossing. The said public crossing connects Railway Street which forms a part of the Trans-Canada Highway on the northwesterly side of the Village with Front Street on the southeasterly side of the Village. Trans-Canada Highway connects Nipigon with Port Arthur, Fort William, Schreiber and Geraldton.

Front Street which runs parallel to the railway right-of-way is the main business street of the Village. The population of the Township is approximately 1,160 of which number about 816 are residents of the Village. Of the residents of the Village some 595 live on the northwest side of the railway and some 221 on the southeast side where the hotels, post office and main business establishments are located. The public and continuation school is located between Fifth and Sixth Streets on the northwest side of the railway.

The location of the proposed new crossing at First Street, mileage 63.35, is 1425.6 feet southwesterly of the existing crossing. First Street on the northwest side of the railway connects with the Trans-Canada Highway at a point a short distance from the railway right of way and is well built up with some thirty good residences.

The opening up of another crossing over the railway as proposed would undoubtedly be a substantial convenience particularly to the people who reside on and in the vicinity of First Street on both sides of the railway. It would also likely be of some advantage to the hotels and business interests located along Front Street.

A considerable amount of pulpwood is hauled by motor trucks on the highway from limits north and west of Nipigon Township to the Brompton Pulp and Paper Company's ground wood mill located about one and one-half miles to the southwest of the Village. Most of these trucks come in from the north and west on Trans-Canada Highway to Fifth Street, cross over the present crossing and back along Front Street on their way to the mill. On behalf of the Township it is contended, and I think rightly, that if the proposed new crossing is opened up at First Street these trucks would use the more direct route over such crossing. This is advanced by the Township as a further ground in support of the application. It would also remove considerable heavy traffic such as pulpwood trucks from other Village streets.

Nipigon presents the appearance of an active and growing community. The prospect of further growth would seem reasonably promising. In the event of any substantial growth it is anticipated that such growth will be southwest

of First Street in the direction of the mill. Brompton Pulp and Paper Company have recently purchased the Red Rock Mill some eleven or twelve miles by road from Nipigon. It is contemplated that this company will manufacture pulp at Red Rock on a large scale. This operation, the Township officials claim, will add substantially to the growth and importance of the Village of Nipigon. It is not possible to say at this time whether the small pulp mill near the Village, which is also owned by the Brompton Company, will continue to operate after the large mill at Red Rock comes into production.

Some idea of the amount of road traffic passing over the railway at the existing crossing in both directions can be gathered from the traffic census taken by the Company for the forty-eight hour period of Friday, April 21, and Saturday, April 22, 1944. This census shows the following result:—

	No. of pedestrians	No. of horse- drawn vehicles	No. of automobiles	No. of buses	No. of trucks carrying pulpwood and fuel wood	No. of trucks general trucking
April 21st.....	1150	0	560	4	18	449
April 22nd.....	1576	4	506	2	89	264

The railway train movements for the same forty-eight hour period were as follows: April 21st—Through freight trains, 10; freight trains taking siding, 7; passenger trains, 9; total trains, 26. April 22nd—Through freight trains, 10; freight trains taking siding, 4; passenger trains, 8; total trains, 22. The average number of railway trains of all classes passing Nipigon per day in both directions is approximately 24.

All or almost all railway trains from both directions stop at Nipigon. This is done to take on water when not required to stop for other purposes. The Railway's yard is equipped with two water standpipes which operate under gravity pressure. These standpipes are about 1,120 feet apart, one toward the east end and the other toward the west end of the yard. Most westbound trains when stopped block the existing crossing. Many of the trains must therefore be cut at the crossing to prevent undue delay to road traffic.

Section 311 of The Railway Act provides that whenever any railway crosses any highway at rail level, the company shall not, nor shall its officers, agents or employees, wilfully permit any engine, tender or car, or any portion thereof, to stand on any part of such highway, for a longer period than five minutes at one time, or in shunting, to obstruct public traffic for a longer period than five minutes at one time, or in the opinion of the Board, unnecessarily interfere therewith.

From the evidence it appears that on occasions the trains have been allowed, particularly at night, to stand on the existing highway crossing for periods considerably longer than five minutes at one time. It is the responsibility of the Company to see that Section 311 of the Act is observed. The officials of the Company, at the hearing, stated that they had taken appropriate action to ensure that Section 311 is strictly complied with.

On behalf of the Township it was urged that for fire protection reasons it was most desirable that there be free passage by highway at all times for fire fighting equipment between the two sides of the Village; that the construction of the second crossing would largely meet this situation, as it is unlikely that both crossings would be blocked by trains at the one time. The Township has met the existing condition by placing its main fire station on the southeast side of the Village and two smaller or sub-stations on the northwest side.

The proposed new highway crossing at grade level, at First Street would pass over the main line, a passing track, and the end of the lead to a siding and the west leg of the wye of the railway.

The construction of the crossing would make necessary the removal of standard section house No. 3, the west section house, from its present location.

This would involve the purchase of additional land, as there is no location on the Company's property other than that which it now occupies that could be used for the purpose.

The estimate of the cost of opening up and construction of the crossing as a standard highway crossing at grade level, and without any additional safety appliances in the form of protection, as furnished by the Company is \$4,000 exclusive of grading the approaches. And the annual cost of maintenance and operation of such a crossing is estimated at \$230, by the Company. The representatives of the Township considered the estimate of cost excessive in some respects and particularly the item of \$2,000 for removing the most westerly section house. I think, however, that the estimate of cost as furnished is a reasonable estimate.

What the officials of the Township ask for is an ordinary standard highway crossing without additional protection for the safety of the public. They express the view that such a crossing would be a good level crossing and quite as safe as the existing crossing; and that the installation of additional protection would be unnecessary. With this view I am unable to agree. The crossing would, I think, soon become a fairly busy crossing. It would tend to invite over it road traffic passing over Trans-Canada Highway in an easterly direction which otherwise might not cross the railway.

In addition to the evidence before us, the Board while in Nipigon, in company with its Chief Engineer and representatives of the Township and the Company, made a careful examination of the location and conditions on the ground. We also had the advantage of observing throughout the whole of one day the train movements and road traffic. Reference has already been made to the amount of such traffic.

Owing to the layout of the railway facilities and the length of trains in operation it would be necessary to cut many of the trains to prevent the blocking of the proposed crossing. The freight shed is toward the westerly end of the railway yard. Over seventy-five per cent of the switching takes place at this end and would have to be done over the proposed crossing. The view of trains at the crossing would be reasonably good except at the northeast angle, when a train or cars would be standing on the tracks, and when a train is broken to prevent obstruction of the crossing. The line of vision of users of the highway proceeding in a southerly direction would be poor in respect to trains approaching from the east, and when cars are standing on the passing track, business track, or the west leg of the wye, as is frequently the case, the view would be almost entirely obstructed.

A District Engineer of the Board who made an examination of the location some time ago expressed the opinion that if the crossing were established it would need to be protected by gates. The Chief Engineer of the Board, who has also examined the location, reports that protection in the form of flashing lights or wigwags automatically controlled would not operate properly due to railway operations in the vicinity of the crossing, and that, in any event, manually operated gates would constitute a minimum of protection.

In addition to the danger feature to users of the proposed crossing and to railway operation, the Company pointed out that there is an up grade proceeding in an easterly direction. This grade starts about the westerly mile board and flattens out a little east of the easterly standpipe. The result would be that trains obliged to stop due to the crossing would have difficulty in starting again. A crossing at the proposed location would, no doubt, occasion considerable inconvenience to the Company, and particularly at this time when the traffic on the line is abnormally heavy due largely to conditions arising out of the war.

Upon most earnest and careful consideration of all that has been placed before us, and after an examination of the location and observance of the con-

ditions on the ground as they exist at present, I have reached the conclusion that, if the application is granted it should be only on the condition that additional protection for the safety and convenience of the public, in the form of manually operated electric crossing gates, be at the same time installed. An ordinary standard highway crossing at grade level would, in my view, be too dangerous.

The estimate of the cost of supplying and installing electric crossing gates to be manually operated, including tower, as furnished by the Company is \$7,250. And the additional annual expense for the operation and maintenance of such gates is estimated at \$6,608.50, by the Company.

This raises the question of the apportionment of the cost of construction and maintenance of the crossing, and of the construction, maintenance and operation of the additional protection, if the crossing is authorized.

The Township of Nipigon seeks to open a highway crossing over the tracks of the Company. The crossing would be a new public right over the privately owned right of way of the Company. When a municipality seeks to open a crossing over railway tracks as in this case, and the property of the railway is thus made subject to the construction of a road across it and its use, the generally uniform practice of the Board has been to put the whole cost of construction and maintenance upon the applicant.

Mission District Board of Trade v. C.P.R. (1912), 14 C.R.C. 331; Lachine v. G.T.R. (1915), 18 C.R.C. 385; Mont Laurier v. C.P.R. (1915), 18 C.R.C. 387; Saskatchewan Board of Highway Com'rs. v. C. Nor. R. Co. (1915), 28 D.L.R. 559, 19 C.R.C. 295; Pontiac v. C.P.R. (1915), 19 C.R.C. 298; London v. G.T.R. (1915), 20 C.R.C. 242; Sasman v. C. Nor R. (1916), 20 C.R.C. 246; New Westminster, B.C., v. Great Northern Ry. Co. and C.P.R. Co. 51 C.R.C. 328.

The representatives of the Township say that they could finance the cost of construction and maintenance of the crossing, but could not bear the burden of construction or maintenance or operation of additional protection. Under the circumstances present here the Board could not make any grant out of The Railway Grade Crossing Fund towards the cost of the actual construction work for the crossing or for the protection. The appropriate provision of The Railway Act is only applicable to an existing crossing. Here the Township is just now seeking to have a new crossing created.

At the hearing some discussion took place in respect to a subway. The District Engineer of the Company expressed the view that a subway would be easy to build at the location; and that drainage would be perfect because of the deep ravine almost immediately adjoining. While this would probably be a most satisfactory solution of the problem, the question is not presently before us. And besides the cost which the Township would probably be required to bear is presently much beyond its financial capacity.

The construction and opening up of an additional crossing at the location, as applied for, would be of substantial convenience to the Village of Nipigon. But I do not consider it an immediate and urgent public necessity. For the reasons stated I would dismiss the application.

It would perhaps be appropriate to add an additional word. If the expectations for the growth and development of the community are realized, the desire for a second crossing of the railway may become an actual necessity. In such case the Township will always be free to apply again. The question can then be further and fully considered in the light of the circumstances existing at the time.

Ottawa, May 29, 1944.

J. A. CROSS.

I concur

J. A. STONEMAN.

F. M. MACPHERSON.

ORDER No. 64904

In the matter of the application of the Township of Nipigon, in the Province of Ontario, hereinafter called the "Applicant," under Section 256 of the Railway Act, for leave to construct a highway crossing over the Canadian Pacific Railway at mileage 63.35 Nipigon Subdivision, as shown on plan and profile on file with the Board under file No. 43666.

THURSDAY, the 1st day of June, A.D. 1944.

J. A. CROSS, K.C., *Chief Commissioner.*

J. A. STONEMAN, *Commissioner.*

F. M. MACPHERSON, *Commissioner.*

Upon hearing the application at the sittings of the Board held at Nipigon on the 2nd day of May, 1944, in the presence of Counsel for and representatives of the Applicant and the Railway Company, and what was alleged—*It is ordered:*

That the application be, and it is hereby, dismissed.

J. A. CROSS,
Chief Commissioner.

ORDER No. 64850

In the matter of the application of American Air Lines, Inc., hereinafter called the "Applicant," under Section 13 of The Transport Act, 1938, for a licence to transport by air passengers and/or goods between Buffalo, New York, and Toronto, Ontario. File No. 42007.33

TUESDAY, the 16th day of May, A.D. 1944

J. A. CROSS, K.C., *Chief Commissioner.*

HUGH WARDROPE, *Assistant Chief Commissioner.*

J. A. STONEMAN, *Commissioner.*

G. A. STONE, *Commissioner.*

F. M. MACPHERSON, *Commissioner.*

Whereas, in pursuance of Order No. 63567, dated May 15th, 1943, Licence Number C.T.C. (A.T.) 74 was issued to the Applicant for the period of one year commencing on June 17th, 1943—

Therefore it is ordered: That a licence be issued to the Applicant for the period of one year commencing on June 17th, 1944, in renewal of the said Licence Number C.T.C. (A.T.) 74.

J. A. CROSS,
Chief Commissioner.

ORDER No. 64862

In the matter of the application of Canadian Pacific Air Lines Limited, under Section 21 of The Transport Act, 1938, for approval of Supplement No. 2 to Standard Passenger Tariff C.T.C. (DSL) No. 4, and Supplement No. 2 to Standard Goods Tariff C.T.C. (DSL) No. 5, on file with the Board under file No. 42017.13.

SATURDAY, the 20th day of May, A.D. 1944

J. A. CROSS, K.C., *Chief Commissioner.*

HUGH WARDROPE, *Assistant Chief Commissioner.*

J. A. STONEMAN, *Commissioner.*

Upon the report and recommendation of the Assistant Director, Traffic Department of the Board—

It is ordered: That the said Supplement No. 2 to Standard Passenger Tariff C.T.C. (DSL) No. 4, and Supplement No. 2 to Standard Goods Tariff C.T.C. (DSL) No. 5 of Canadian Pacific Air Lines Limited, on file with the Board under file No. 42017.13, be, and they are hereby, approved.

J. A. CROSS,
Chief Commissioner.

ORDER No. 64863

In the matter of the application of Canadian Pacific Air Lines, Limited, under Section 21 of The Transport Act, 1938, for approval of Supplement No. 2 to Standard Passenger Tariff C.T.C. (GCA) No. 7, and Supplement No. 2 to Standard Goods Tariff C.T.C. (GCA) No. 8, on file with the Board under file No. 42017.15.

SATURDAY, the 20th day of May, A.D. 1944.

J. A. CROSS, K.C., *Chief Commissioner.*
HUGH WARDROPE, *Assistant Chief Commissioner.*
J. A. STONEMAN, *Commissioner.*

Upon the report and recommendation of the Assistant Director, Traffic Department of the Board—

It is ordered: That Supplement No. 2 to Standard Passenger Tariff C.T.C. (GCA) No. 7, and Supplement No. 2 to Standard Goods Tariff C.T.C. (GCA) No. 8 of Canadian Pacific Air Lines, Limited, on file with the Board under file No. 42017.15, be, and they are hereby, approved.

J. A. CROSS,
Chief Commissioner.

ORDER No. 64884

In the matter of the application of Arrow Airways Limited, hereinafter called the "Applicant," under Section 13 of The Transport Act, 1938, for a licence to transport passengers and/or goods by air between The Pas, Cormorant Lake, Reed Lake, Herb Lake, North Star Lake, Elbow Lake, Sherridon, Gurney Gold (Brune Lake), Cranberry Portage, and Flin Flon, in the Province of Manitoba.

File No. 42007.6

FRIDAY, the 26th day of May, A.D. 1944.

J. A. CROSS, K.C., *Chief Commissioner.*
HUGH WARDROPE, *Assistant Chief Commissioner.*
J. A. STONEMAN, *Commissioner.*
F. M. MACPHERSON, *Commissioner.*

Whereas, in pursuance of Order No. 63669, dated June 16, 1943, a licence was issued to the Applicant in renewal of Licence Number C.T.C. (A.T.) 29 for the period of one year commencing on June 23rd, 1943—

Therefore it is ordered: That a licence be issued to the Applicant for the period of one year commencing on June 23rd, 1944, in renewal of the said Licence Number C.T.C. (A.T.) 29.

J. A. CROSS,
Chief Commissioner.

ORDER No. 64894

In the matter of the application of Canadian Airways Limited, hereinafter called the "Applicant," under Section 13 of The Transport Act, 1938, for a licence to transport passengers and/or goods by air between Sioux Lookout and/or Hudson, Pickle Lake, Doghole Bay, Uchi Lake and/or Lost Bay, in the Province of Ontario.

File No. 42007.4.5

TUESDAY, the 30th day of May, A.D. 1944.

J. A. CROSS, K.C., *Chief Commissioner.*

HUGH WARDROPE, *Assistant Chief Commissioner.*

G. A. STONE, *Commissioner.*

Whereas, in pursuance of Order No. 63671, dated June 16th, 1943, a licence was issued to the Applicant in renewal of Licence Number C.T.C. (A.T.) 31 for the period of one year commencing on June 26th, 1943—

Therefore it is ordered: That a licence be issued to the Applicant for the period of one year commencing on June 26th, 1944, in renewal of the said Licence Number C.T.C. (A.T.) 31.

J. A. CROSS,

Chief Commissioner.

ORDER No. 64895

In the matter of the application of Arrow Airways Limited,, hereinafter called the "Applicant," under Section 13 of The Transport Act, 1938, for a licence to transport passengers and/or goods by air between Flin Flon, in the Province of Manitoba, and Pelican Narrows and Island Falls, in the Province of Saskatchewan.

File No. 42007.6.2

TUESDAY, the 30th day of May, A.D. 1944.

J. A. CROSS, K.C., *Chief Commissioner.*

HUGH WARDROPE, *Assistant Chief Commissioner.*

G. A. STONE, *Commissioner.*

Whereas, in pursuance of Order No. 63670, dated June 16th, 1943, a licence was issued to the Applicant in renewal of Licence Number C.T.C. (A.T.) 30 for the period of one year commencing on June 26th, 1943—

Therefore it is ordered: That a licence be issued to the Applicant for the period of one year commencing on June 26th, 1944, in renewal of the said Licence Number C.T.C. (A.T.) 30.

J. A. CROSS,

Chief Commissioner.

ORDER No. 64896

In the matter of the application of Mackenzie Air Service Limited, hereinafter called the "Applicant," under Section 13 of The Transport Act, 1938, for a licence to transport passengers and/or goods by air between Edmonton, Lac la biche, South Wabiskaw Lake, North Wabiskaw Lake, McMurray, Bitumont, Embarras, Chipewyan, in the Province of Alberta; Fort Smith, in the Northwest Territories; and Goldfields, Fond du Lac, and Stony Rapids, in the Province of Saskatchewan.

File 42007.14

TUESDAY, the 30th day of May, A.D. 1944.

J. A. CROSS, K.C., *Chief Commissioner.*HUGH WARDROPE, *Assistant Chief Commissioner.*G. A. STONE, *Commissioner.*

Whereas, in pursuance of Order No. 63672, dated June 16th, 1943, a licence was issued to the Applicant in renewal of Licence Number C.T.C. (A.T.) 33 for the period of one year commencing on June 26, 1943—

Therefore it is ordered: That a licence be issued to the Applicant for the period of one year commencing on June 26, 1944, in renewal of the said Licence Number C.T.C. (A.T.) 33.

J. A. CROSS,

Chief Commissioner.

ACCIDENTS REPORTED TO THE OPERATING DEPARTMENT BOARD OF TRANSPORT COMMISSIONERS FOR CANADA, APRIL, 1944

Railway accidents	157	with 13 killed and	171 injured
Level crossing accidents....	34	with 22 killed and	43 injured

Totals	191	with 35 killed and	214 injured
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		Killed	Injured
Passengers		1	27
Employees		4	124
Others		30	63
Totals		35	214

DETAILS OF ACCIDENTS AT HIGHWAY CROSSINGS

Accidents	K.	I.	NEW BRUNSWICK
1	—	1	Automobile ran into side of train. Licence N.B. B-20-831.
1	—	1	Automobile ran into side of train. Licence N.B. 13-484.

QUEBEC

1	—	1	Auto truck drove onto crossing in front of approaching train and was struck. Licence Que. P-25613.
1	1	1	Auto truck drove onto crossing in front of approaching train and was struck. Licence Que. P-14402.
1	1	—	Automobile drove onto crossing in front of approaching train and was struck. Licence Que. 118-809.

ONTARIO

1	1	—	Auto truck drove onto crossing in front of approaching train and was struck. Licence Ont. 6343-C.
1	1	3	Automobile drove onto crossing in front of approaching train and was struck. Licence Ont. 67-M-11.
1	—	1	Automobile drove onto crossing in front of approaching train and was struck. Licence Ont. 255-A-7.

DETAILS OF ACCIDENTS AT HIGHWAY CROSSINGS—*Con.*

Accidents	K.	I.	ONTARIO— <i>Con.</i>
1	—	1	Pedestrian walked in front of approaching train and was struck.
1	—	1	Auto truck drove onto crossing in front of approaching train and was struck. Licence not given.
1	1	3	Automobile ran into side of train. Licence Ont. 4-B-917.
1	—	1	Pedestrian walked onto crossing in front of approaching train and was struck.
1	2	1	Automobile drove onto crossing in front of approaching train and was struck. Licence Ont. 526-T-2.
1	3	2	Automobile drove onto crossing in front of approaching train and was struck. Licence Ont. 94-D-97.
1	1	—	Auto truck drove onto crossing in front of approaching train and was struck. Licence Ont. 38181-C.
1	1	—	Pedestrian walked onto crossing in front of approaching train and was struck.
1	2	—	Two young boys standing on eastward track, watching westward train go by, struck by eastward train.
1	1	—	Auto truck ran into side of train. Licence Ont. 93619-C.
1	1	4	Automobile ran into side of train. Licence Ont. 73-R-48.
1	—	1	Automobile ran onto crossing in front of approaching train and was struck. Licence Ont. 6-E-374.
1	1	3	Auto truck drove onto crossing in front of approaching train and was struck. Licence Ont. 265-A.
MANITOBA			
1	—	3	Automobile ran into side of train. Licence Man. 84885.
1	—	1	Auto truck drove onto crossing in front of approaching train and was struck. Licence Man. T-3311.
1	—	1	Automobile ran into side of train. Licence Man. D-498.
SASKATCHEWAN			
1	—	6	Automobile ran into side of train. Licence Sask. 32-408.
1	1	—	Auto truck drove onto crossing in front of approaching train and was struck. Licence Sask. C-7693.
1	—	1	Automobile drove onto crossing in front of approaching train and was struck. Licence Sask. 74826.
1	—	1	Auto truck drove onto crossing in front of approaching train and was struck. Licence Sask. F-26374.
1	—	1	Auto truck drove onto crossing in front of approaching train and was struck. Licence Sask. F-22-079.
ALBERTA			
1	—	3	Auto truck drove onto crossing in front of approaching train and was struck. Licence Alta. PSV. 4721.
1	1	—	Pedestrian walked onto crossing in front of approaching train and was struck.
1	2	—	Auto truck drove onto crossing in front of approaching train and was struck. Licence Alta. 32-686.
1	—	1	Auto truck drove onto crossing in front of approaching train and was struck. Licence Alta. PSV. 42666.
BRITISH COLUMBIA			
1	1	—	Automobile drove onto crossing in front of approaching train and was struck. Licence B.C. 51-947.

Of the 34 accidents at highway crossings, 22 occurred at unprotected crossings and 12 at protected crossings. Twenty of the accidents occurred after sunrise and fourteen after sunset.

June 3rd, 1944.

SUMMARY OF ORDERS ISSUED BY THE BOARD

- 64852 May 19—Declaring C.P.R. crossing of highway at mileage 34.51 Portal Subd., Sask., protected to Board's satisfaction.
- 64853 May 19—Declaring C.N.R. crossing second west of Longueuil Station, Que., protected to Board's satisfaction.
- 64854 May 19—Declaring Toronto, Hamilton & Buffalo Railway crossing of Beach Road, Hamilton, Ont., protected to Board's satisfaction; speed limitation of fifteen miles per hour to be maintained.
- 64855 May 19—Authorizing C.N.R. to construct spur track to serve Canada Packers Limited at Tache Ave. and Rue Messenger, St. Boniface, Man.
- 64856 May 19—Authorizing C.N.R. to remove their station building at Brown Hill, Ont.
- 64857 May 20—Declaring C.N.R. crossing first just west of Hampton Station, N.B., protected to Board's satisfaction; present speed limitation of ten miles per hour to be maintained; all train movements to be flagged by a member of the train crew.
- 64858 May 20—Declaring C.P.R. crossing of the County Road three miles west of Haley's Station, Ont., protected to Board's satisfaction.
- 64859 May 22—Authorizing Commissioner Stoneman to sign regulations, etc. of the Board in the absence of the Chief Commissioner.
- 64860 May 22—Relieving C.P.R. from maintaining cattle guards at highway crossings at various mileages on the Quebec Subd., P.Q.
- 64861 May 19—Approving clearances of cinder drainage disposal plant at McAdam, N.B. (C.P.R.)
- 64862 May 20—Approving Supplement No. 2 of Canadian Pacific Air Lines Ltd. to S.P.T. No. 4 and S.G.T. No. 5.
- 64863 May 20—Approving Supplement No. 2 of Canadian Pacific Air Lines Ltd. to S.P.T. No. 7 and S.G.T. No. 8.
- 64864 May 20—Declaring C.P.R. crossing first west of Pense Station, Sask., protected to Board's satisfaction.
- 64865 May 22—Declaring C.N.R. crossing second west of station at Dauphin, Man., protected to Board's satisfaction.
- 64866 May 22—Relieving C.P.R. from maintaining cattle guards at highway crossings at various mileages on the Ste. Agathe Subd., P.Q.
- 64867 May 23—Authorizing C.N.R. to operate their trains through interlocking plant at north end of their Montreal Terminals.
- 64868 May 24—Authorizing C.N.R. to construct siding across Commercial Street at LaTuque, Que., to serve the Aluminum Company of Canada, Ltd.
- 64869 May 23—Approving under Maritime Freight Rates Act tolls published in tariffs filed by C.N.R. under Sec. 3.
- 64870 May 22—Declaring C.N.R. crossing first west of station at Watson, Sask., protected to Board's satisfaction.
- 64871 May 23—Authorizing C.P.R. to remove the caretaker-agent at Kingsbury Station, Que.
- 64872 May 24—Declaring C.P.R. crossing first east of the station at Kaministiquia, Ont., protected to Board's satisfaction.
- 64873 May 24—Declaring Pere Marquette Railway crossing east of Cedar Springs, Ont., protected to Board's satisfaction.
- 64874 May 24—Approving under Maritime Freight Rates Act tolls published in tariffs filed by the Canadian Freight Association under Sec. 3.
- 64875 May 25—Approving under Maritime Freight Rates Act tolls published in tariffs filed by the Cumberland Railway & Coal Company under Sec. 9.
- 64876 May 24—Declaring C.N.R. crossing of Ottawa Street, Hamilton, Ont., protected to Board's satisfaction; train movements over the crossing to be flagged by a member of the train crew.
- 64877 May 24—Declaring C.N.R. crossing of Sherman Avenue, Hamilton, Ont., protected to Board's satisfaction; all train movements over the crossing to be flagged.
- 64878 May 24—Declaring Pere Marquette Railway crossing of Provincial Highway No. 2, west of Pelton, Ont., protected to Board's satisfaction.
- 64879 May 25—Declaring C.N.R. crossing first public west of Clova Station, Que., protected to Board's satisfaction.
- 64880 May 25—Declaring C.N.R. crossing of Rose de Lima Street, Montreal, Que., protected to Board's satisfaction.

- 64881 May 25—Approving under Maritime Freight Rates Act tolls published in tariffs filed by C.P.R. under Section 9.
- 64882 May 25—Authorizing New York Central Railroad Co. and C.N. Rys. to operate their trains through interlocking plant at crossing of their railways at Hagersville, Ont.
- 64883 May 25—Declaring C.P.R. crossing second north of Okotoks Station, Alta., protected to Board's satisfaction; present speed limitation of ten miles per hour at crossing to be maintained.
- 64884 May 26—Authorizing issuing of Licence to Arrow Airways Limited, in renewal of Licence No. C.T.C. (A.T.) 29.
- 64885 May 27—Authorizing The Monarch Coal Mining Co. Ltd., to construct a mining entry under tracks of C.P.R. in L.S.D. 7, Sec. 8, Twp. 29, Range 20, W4M., Alta.
- 64886 May 26—Approving location and details of C.N. Rys. proposed station at Redmond, Ont.
- 64887 May 26—Approving crossing of public road by tracks of the C.N.R. Rouyn-Sennecterre line Mile 87·8 Val d'Or Subd., Que.
- 64888 May 26—Directing C.P.R. to install two flashing signals and one bell at crossing of John Street, Orangeville, Ont.
- 64889 May 27—Extending time in which to construct branch line of railway to serve Summit Lumber Co. Ltd., mileage 12·3 Lake Cowichan Subd.
- 64890 May 27—Approving location and details of C.P.R. Co's new station at Wellington, Vancouver Island, B.C.
- 64891 May 27—Approving location and details of C.P.R. Co's new station at Ladysmith, Vancouver Island, B.C.
- 64892 May 27—Authorizing C.N.R. to install power-operated distant signals at interlocking plant at mileage 103·75 near Petrel, Manitoba.
- 64893 May 30—Declaring C.N.R. crossing first west of Kinhop Station, Sask., protected to Board's satisfaction.
- 64894 May 30—Authorizing issuing of Licence to Canadian Airways Limited in renewal of Licence No. C.T.C. (A.T.) 31.
- 64895 May 30—Authorizing issuing of Licence to Arrow Airways Limited in renewal of Licence No. C.T.C. (A.T.) 30.
- 64896 May 30—Authorizing issuing of Licence to Mackenzie Air Service Ltd. in renewal of Licence No. C.T.C. (A.T.) 33.
- 64897 May 30—Directing Niagara, St. Catharines & Toronto Railway Co. not to exceed ten miles an hour when approaching within 100 ft. of or passing over Fourth Avenue, Niagara Falls, Ont.
- 64898 May 30—Approving By-law No. 3498 of the City of Niagara Falls, prohibiting sounding of engine whistles at highway crossings within city limits.
- 64899 May 30—Authorizing C.N.R. to make changes in interlocking plant at their crossing of C.P.R. at St. Boniface, Man.
- 64900 May 30—Declaring Grand River Rly. crossing of Concession Road, Preston, Ont., protected to Board's satisfaction.
- 64901 May 31—Declaring C.P.R. crossing at mileage 12·93 Kimberley Subd., Marysville, B.C., protected to Board's satisfaction.
- 64902 May 31—Authorizing C.N.R. to reconstruct bridge over Clarks Creek, mileage 258·24 Oshawa Subd., Ont.
- 64903 May 31—Declaring C.P.R. crossing of Fourth Street West, Calgary, Alta., protected to Board's satisfaction; present speed limitation of ten miles an hour to be maintained.

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The Board of Transport Commissioners for Canada

Judgments, Orders, Regulations and Rulings

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Consideration of the question of the installation of additional protection at Fisher's Highway Crossing, Canadian National Railways, in Nelson Township, in the County of Halton, 1.21 miles east of Burlington Junction, in the Province of Ontario; and the apportionment of the cost of construction and maintenance of such protection.

File No. 9437.1154

Heard at Hamilton, Ont., May 23rd, 1944.

JUDGMENT

STONE, Commissioner:

Fisher's Crossing is at present protected by an old type automatic bell and illuminated danger sign installed under Board's Order No. 22458, dated August 28th, 1914. The Order provided that twenty per cent of the cost of installing the said bell be paid out of The Railway Grade Crossing Fund, and the remainder by the Grand Trunk Railway Company. The Railway Company was also required to maintain the said bell at its own expense.

The Canadian National Railways filed for approval plan—S.D. 3210 A, dated September 25th, 1943—showing a proposed re-arrangement of the ringing circuit of this signal protection. An inspection was made by the Board's Signal Engineer who reported that the sight lines are restricted in three angles of the crossing; rail traffic heavy and fast; and traffic on the highway was substantial, including bus movements, and he recommended that the present protection should be replaced by two flashing light signals and one bell. Also that a re-adjustment should be made in the west bound ringing circuit.

Submissions were solicited from the Canadian National Railways (afterwards referred to herein as the "Railway"), together with estimate of the cost for installation of the protection recommended. The Railway's estimate of the cost of installing the proposed protection is \$1,550, and the cost of maintenance \$300 per annum.

The attention of the Clerk of the County of Halton, Ontario, was called to the fact that the present protection at said crossing was considered inadequate, and the authorities of the County were requested to advise the Board if they were agreeable to an Order issuing for the installation of the protection recommended, provided the Board made a contribution of forty per cent, the balance of the cost of construction, as well as maintenance costs, to be divided equally between the County and the Railway.

The Board was advised on January 19, 1944, that the Halton County Council was not in favour of the type of protection recommended, and, following further exchange of correspondence between the County Council and the Railway, the case was eventually heard at Hamilton, Ontario, on Tuesday, the 23rd day of May, 1944.

At the hearing Mr. L. Z. McPherson appeared for the Railway; Mr. Roy Smith, County Engineer, and Mr. W. J. Robertson, Reeve of Nelson Township, appeared for the County of Halton.

Fisher's crossing, originally one of the old trails going through the County, is a main County road, and is senior to the Railway. It was alleged at the hearing that the road-bed of the Railway was constructed considerably above the former road level, and that in elevating the highway over the railway additional hazards developed for vehicles to clear the crossing. In three angles of the crossing the view lines are restricted by hedges and orchards. Two main lines cross the highway, and just west of this crossing there are two additional side tracks where standing trains occasionally obscure main line trains approaching from the west.

The Canadian Pacific Railway also operate trains over this section of the Canadian National Railways, the rail movements being frequent and fast. The trains are considerably longer, and main line movements have increased approximately ten per cent over the number operated at the time the present protection was installed.

Traffic on the highway is considered fairly heavy and buses operate over the crossing between Hamilton and Burlington, and between Milton and Hamilton. It was stated the Canada Coach line has 23 movements over this crossing from 6.24 a.m. to 12.54 a.m., and the Milton-Hamilton bus two movements each day, and, in addition to other vehicular and pedestrian traffic, there are 132 school children using the crossing on school days.

The nature and extent, in greater detail, of the rail and road traffic over the crossing is shown by a traffic census taken by the Railway covering the period 6.00 a.m., May 17, to 6.00 a.m., May 19, 1944. This census for the forty-eight hour period shows the following result:—Number of trains west 90, east 86, total 176; number of pedestrians south 181, north 125, total 306; number of vehicles south 443, north 418, total 861.

The average number of trains per day passing over the crossing for the two day period was 88. This is not an abnormal movement on this line.

Representatives of the County of Halton emphasized the necessity for construction of a subway at this crossing, instead of installing more adequate automatic protection such as flashing lights and bell. Discussing costs for construction of a subway, the Chief Commissioner explained that the Board had no available funds from which a contribution could be made for expensive works such as subways or diversions, but that the Board would be willing to allocate 40 per cent towards the cost of installation of additional automatic protection out of the balance on hand in the Railway Grade Crossing Fund. Counsel for the Railway stated he was not prepared to argue the question of the advisability or otherwise of a subway, and contended that costs for any additional protection, if so ordered, should, after a contribution had been

made from the Railway Grade Crossing Fund, be divided equally between the Railway and the County, and maintenance charges borne equally by them.

Mr. Smith stated,—

"I submit the Canadian National Railways have, by the construction of their tracks, definitely increased the hazard at this crossing.

"So far as the County is concerned, for that reason, whether there is flashing lights or a subway or anything else, we feel the County should not be asked to pay 50 per cent of the remaining 60 per cent, even supposing the Board of Transport were to pay the initial 40 per cent.

"We admit, of course, that traffic has increased on that road from 1914."

(Page 485, Vol. 711)

The contents on file and oral evidence submitted indicate that greater hazards to traffic now exist at this crossing than formerly, and that better protection is necessary and should be provided.

The frequent and fast train movements, combined with the restricted sight lines for vehicular, bus, and pedestrian travel over this crossing, in my opinion, warrant more efficient protection than that which is there at the present time.

During the present war emergency consideration of the construction of a subway may well be deferred. The recommendation of the Board's Signal Engineer that the present protection should be replaced by two flashing light signals and one bell, and that the westbound ringing circuit should be readjusted, appears logical under the circumstances, and such an installation should provide efficient protection provided highway traffic observes signal indications.

The highway is senior at the crossing, and the present protection is maintained solely at the expense of the Railway. The bus and other substantial vehicular and pedestrian traffic have also increased the hazards, as well as the Railway, therefore I am of the opinion that the County should contribute towards the cost of additional protection and maintenance.

I would direct that two flashing lights and one bell be installed, and that the westbound circuit be readjusted, all in conformity with the Board's Engineering requirements and standards. Forty per cent of the cost of installation, not exceeding an amount of \$620, to be paid out of the Railway Grade Crossing Fund, and the balance of sixty per cent for installation, and all maintenance costs, to be paid seventy per cent by the Canadian National Railways and thirty per cent by the County of Halton.

Detailed plans of the protection and installation will be submitted for the approval of an Engineer of the Board.

Order to issue accordingly.

G. A. STONE.

May 30th, 1944.

I concur

J. A. CROSS

HUGH WARDROPE

ORDER No. 64914

In the matter of the consideration of the question of the installation of additional protection at the crossing of the highway by the Canadian National Railways known as Fishers Crossing, being the second public crossing east of Burlington, Ontario, mileage 30.80 Oakville Subdivision; and the apportionment of the cost of installation and maintenance of such protection.

File No. 9437.1154

SATURDAY, the 3rd day of June, A.D. 1944.

J. A. CROSS, K.C., *Chief Commissioner.*

HUGH WARDROPE, *Assistant Chief Commissioner.*

G. A. STONE, *Commissioner.*

Upon hearing the matter at the sittings of the Board held at Hamilton on May 23, 1944, in the presence of Counsel for and representatives of the Canadian National Railways, the Township of Nelson, and the County of Halton, and what was alleged—

It is ordered:

1. That, within ninety days from the date of this Order, the Canadian National Railways install two flashing lights and one bell at the said highway crossing at mileage 30.80 Oakville Subdivision, in the Province of Ontario, in accordance with the Specifications approved by General Order No. 607, dated September 29, 1941: detail plans showing the layout thereof to be submitted for the approval of an Engineer of the Board.

2. That readjustment of the westbound ringing circuit at the said crossing, as shown on plan SD-3210A, dated September 25, 1943, on file with the Board under file No. 9437.1154, be, and it is hereby, approved.

3. That forty per cent of the cost of installing the said flashing lights and one bell, not exceeding, however, the sum of \$620.00, be paid out of the Railway Grade Crossing Fund; and that the remainder of such cost, as well as the cost of maintenance, be borne and paid seventy per cent by the Canadian National Railways and thirty per cent by the County of Halton.

J. A. CROSS,
Chief Commissioner.

Consideration of the question of the apportionment of the cost of installing and maintaining the flashing lights which the Canadian National Railways were directed to install by Board's Order No. 64359, dated January 4, 1944, and which have since been installed at the crossing of Waterdown Road by the Canadian National Railways, being the first public road crossing east of Aldershot Station, in the Province of Ontario, mileage about 34.83 Oakville Subdivision.

File No. 9437.174

L. Z. McPherson for the Canadian National Railways.

H. A. F. Boyde, K.C., for the County of Wentworth.

JUDGMENT

WARDROPE, *Assistant Chief Commissioner*:

This case was set down for hearing and was heard in the City of Hamilton, May 23, 1944.

In arriving at a reasonable conclusion as to the apportionment of costs between the interested parties in the matter, it will be helpful to review briefly some of the more relevant facts.

The road of which the crossing in question forms a part is a hard surfaced road and runs in a southerly direction from the Village of Waterdown to Aldershot where it crosses the double track main line of the Canadian National Railways running between Toronto and Hamilton. At Aldershot the road also connects with Queen Elizabeth Highway running between Toronto and Hamilton.

This road is under the jurisdiction of the County of Wentworth.

Approaching the crossing from the north there is a descending grade on the road until within approximately fifty feet of the westbound main track. From this point until the westbound track is reached there is a slight ascending grade. Approaching the crossing from the south there is a slight descending grade until within one hundred and fifty feet of a side track, and from this point to the side track there is a slight ascending grade.

The sight lines from certain angles are somewhat restricted.

The vehicular traffic using the crossing is substantial and admittedly has increased over the years. Included in this traffic, which is principally of a local nature, there is an estimated daily average of some fourteen to sixteen bus movements. This estimate was based on 1939 conditions, prior to war-time restrictions.

Rail traffic at the crossing is exceptionally heavy and fast. The daily average is some eighty trains, more or less, travelling under a permissible timetable speed of eighty miles per hour.

On the 11th of March, 1910, by Board's Order No. 9948, the railway company (then the Grand Trunk Railway) was ordered to install an automatic electric bell at the crossing. This was done at the railway's expense subject to a contribution of 20 per cent of the cost of installation to be paid out of the Railway Grade Crossing Fund. Following this installation the Board's records show that this crossing was singularly free of accidents involving users of the road and the railway up to the year 1942 when five people were injured by reason of a northbound automobile being struck by a westbound train.

Following the tragic accident of September 10, 1943, when a southbound Canada Coach Lines' bus was struck by a westbound train causing the death of twelve persons and injuries to two others, the Board ordered the substitution

of modern flashing lights to be installed at this crossing in place of the existing single warning bell. By this Order the question of the apportionment of the costs of installing and maintaining the said flashing lights was reserved for further decision of the Board.

It can be said, generally speaking, that the usual practice of the Board in apportioning costs of construction and maintenance of protective devices at crossings is, after a grant is made from the Railway Grade Crossing Fund, to divide the balance equally between the interested parties. This is not an inflexible rule, of course, and where the Board considers that the circumstances so warrant, variations are made. The Board has no precise formula, and in every case the apportionment must rest upon the facts and circumstances of such case, and the judgment of the Board based upon its experience, information and knowledge.

Prior to the hearing, in a communication of the Board, it was suggested that after a contribution of 40 per cent of the cost of installation from the Railway Grade Crossing Fund, three-fourths of the remaining cost should be borne by the railway company, and one-fourth by the road authority.

At the hearing the railway contended that the usual practice of the Board should be followed in this case and that they should not be assessed more than the usual 50 per cent of the balance of the cost after a contribution from the Railway Grade Crossing Fund.

The County of Wentworth on the other hand felt that the Board's suggestion was reasonable and that in any event it should not be called upon to bear any greater portion than that suggested.

To my mind a feature of this case that removes it from the usual practice of the Board is the heavy volume of exceedingly fast train traffic over this crossing. While it is true that the highway traffic in nature and in volume over a period of years has changed thus contributing more to the possibilities of accidents, these changes are not abnormal.

Whereas it was stated at the hearing that the volume of train traffic since the original installation of the warning bell in 1910 has not increased by more than 10 per cent, nevertheless under all the circumstances I think this combination of great volume and of high speed train traffic must throw a greater proportion of the share of the costs upon the railway than upon the highway authority.

Taking all the above circumstances into consideration, I think a reasonable distribution of the costs of construction and maintenance should be as follows:—a grant of 40 per cent of the cost of construction, not exceeding an amount of \$1,200 to be made from the Railway Grade Crossing Fund, the balance, as well as the cost of maintenance, to be borne as follows:—70 per cent upon the Canadian National Railways and 30 per cent upon the County of Wentworth.

Order to go accordingly.

HUGH WARDROPE.

June 2, 1944.

I concur:

J. A. CROSS,

G. A. STONE.

ORDER No. 64918

In the matter of the consideration of the question of the apportionment of cost of installing and maintaining the flashing lights which the Canadian National Railways were directed to install by Board's Order No. 64359, dated January 4th, 1944, and which have since been installed at the crossing of Waterdown Road by the Canadian National Railways, being the first public road crossing east of Aldershot Station, in the Province of Ontario, mileage about 34.83 Oakville Subdivision.

File No. 9437.174

SATURDAY, the 3rd day of June, A.D. 1944.

J. A. CROSS, K.C., *Chief Commissioner.*HUGH WARDROPE, *Assistant Chief Commissioner.*G. A. STONE, *Commissioner.*

Upon hearing the matter at the sittings of the Board held at Hamilton, Ontario, on May 23, 1944, in the presence of Counsel for the Canadian National Railways and the County of Wentworth, and what was alleged—

It is ordered: That forty per cent of the cost of installing the said flashing lights be paid out of the Railway Grade Crossing Fund, such sum not to exceed \$1,200.00; and that the remainder of such cost, as well as the cost of maintenance, be borne and paid as follows:—Seventy per cent by the Canadian National Railways and thirty per cent by the County of Wentworth.

J. A. CROSS,
Chief Commissioner.

ORDER No. 64913

In the matter of Agreed Charge between the Canadian National Railways, Canadian Pacific Railway Company, Northern Alberta Railways Company and certain shippers covering transportation of lumber and forest products between stations in Western Canada, specified therein, approved by Order No. 59787, dated October 18, 1940.

File No. 40994.13

SATURDAY, the 3rd day of June, A.D. 1944.

J. A. CROSS, K.C., *Chief Commissioner.*HUGH WARDROPE, *Assistant Chief Commissioner.*J. A. STONEMAN, *Commissioner.*

Whereas Rustad Bros., of White Fox, Saskatchewan, have made application under subsection (6) of Section 35 of The Transport Act, 1938, and represented to the Board that their business will be unjustly discriminated against unless a similar charge be fixed for the transport of their lumber and forest products, and have expressed their willingness to meet and comply with the provisions and conditions of the said Agreed Charge—

It is ordered: That the agreed charges approved by the said Order No. 59787, dated October 18, 1940, be, and they are hereby, fixed for the transport by the said railways of lumber and forest products, as described in paragraph B of the said Agreed Charge, for Rustad Bros., from White Fox, Saskatchewan, to the stations referred to in paragraph C (2) of the said Agreed Charge, subject to and upon the terms and conditions contained in the said Agreed Charge; and the Board hereby appoints the date of this Order as the date on which the said charges fixed as aforesaid are to come into operation.

J. A. CROSS,
Chief Commissioner.

ORDER No. 64920

In the matter of the application of Mackenzie Air Service Limited, hereinafter called the "Applicant", under Section 13 of The Transport Act, 1938, for a licence to transport passengers and/or goods by air between Edmonton, S. Wabiskaw Lake, N. Wabiskaw Lake, McMurray, Chipewyan, Fort Vermilion, Fitzgerald, in the Province of Alberta; and Fort Smith, Resolution, Hay River, Providence, Simpson, Liard, Wrigley, Norman, Good Hope, Arctic Red River, McPherson, Aklavik, in the Northwest Territories.

File No. 42007.14.2

TUESDAY, the 6th day of June, A.D. 1944.

J. A. CROSS, K.C., *Chief Commissioner.*
HUGH WARDROPE, *Assistant Chief Commissioner.*
G. A. STONE, *Commissioner.*
F. M. MACPHERSON, *Commissioner.*

Whereas, in pursuance of Order No. 63673, dated June 16, 1943, a licence was issued to the Applicant in renewal of Licence Number C.T.C. (A.T.) 34 for the period of one year commencing on June 30, 1943—

Therefore it is ordered: That a licence be issued to the Applicant for the period of one year commencing on June 30, 1944, in renewal of the said Licence Number C.T.C. (A.T.) 34.

J. A. CROSS,
Chief Commissioner.

ORDER No. 64946

In the matter of the application of Yukon Southern Air Transport Limited, hereinafter called the "Applicant", under Section 13 of The Transport Act, 1938, for a licence to transport passengers and/or goods by air between Whitehorse, Carmacks, Selkirk, Mayo, and Dawson, in Yukon Territory.

File No. 42007.21.9

SATURDAY, the 10th day of June, A.D. 1944.

J. A. CROSS, K.C., *Chief Commissioner.*

J. A. STONEMAN, *Commissioner.*

G. A. STONE, *Commissioner.*

F. M. MACPHERSON, *Commissioner.*

Whereas, in pursuance of Order No. 63719, dated June 29, 1943, Licence Number C.T.C. (A.T.) 79 was issued to the Applicant for the period of one year commencing on July 9, 1943—

Therefore it is ordered: That a licence be issued to the Applicant for the period of one year commencing on July 9, 1944, in renewal of the said Licence Number C.T.C. (A.T.) 79.

J. A. CROSS,

Chief Commissioner.

ORDER No. 64943

In the matter of the application of the Canadian Pacific Railway Company, hereinafter called the "Applicant Company", for permission to amend its Tariff C.T.C. No. W-3895 on one day's notice to correct an error.

File No. 27612.279

MONDAY, the 12th day of June, A.D. 1944.

HUGH WARDROPE, *Assistant Chief Commissioner.*

J. A. STONEMAN, *Commissioner.*

Whereas, on page 17 of the Applicant Company's Tariff C.T.C. No. W-3895, a rate of 330 cents per ton of 2000 pounds is published on coal and briquettes (coal) from the Drumheller, Alberta, group to stations Parkwater, Washington to Cœur d'Alene, Idaho (Index Nos. 330 to 376), instead of 398 cents per ton of 2000 pounds;

And whereas, on page 25 of the said tariff, a rate of 403 cents per ton of 2000 pounds is published on coal and briquettes (coal) from the Drumheller, Alberta, group to Dishman, Washington (Index No. 1800), instead of 398 cents per ton of 2000 pounds;

And whereas the Applicant Company desires to make correction on short notice in order that the proper and intended rates may apply—

It is ordered: That the Applicant Company be, and it is hereby, permitted to amend its Tariff C.T.C. No. W-3895 on one day's notice, to correct the said error.

HUGH WARDROPE,

Assistant Chief Commissioner.

ORDER No. 64950

In the matter of the application of Wings Limited, hereinafter called the "Applicant", under Section 13 of The Transport Act, 1938, for a licence to transport passengers and/or goods by air between Sioux Lookout and/or Hudson, Uchi Lake and/or Lost Bay, Jackson Manion, and Red Lake, in the Province of Ontario.

File No. 42007.19.4

MONDAY, the 12th day of June, A.D. 1944.

J. A. CROSS, K.C., *Chief Commissioner.*
 HUGH WARDROPE, *Assistant Chief Commissioner.*
 J. A. STONEMAN, *Commissioner.*
 G. A. STONE, *Commissioner.*
 F. M. MACPHERSON, *Commissioner.*

Whereas, in pursuance of Order No. 63718, dated June 29, 1943, a licence was issued to the Applicant in renewal of Licence Number C.T.C. (A.T.) 35 for the period of one year commencing on July 8, 1943—

Therefore it is ordered: That a licence be issued to the Applicant for the period of one year commencing on July 8, 1944, in renewal of the said Licence Number C.T.C. (A.T.) 35.

J. A. CROSS,
Chief Commissioner.

ORDER No. 64954

In the matter of the application of Quebec Airways Limited, hereinafter called the "Applicant", under Section 13 of The Transport Act, 1938, for a licence to transport passengers and/or goods by air between Rimouski and Blanc Sablon, Quebec, and intermediate points.

File No. 42007.5.6

MONDAY, the 12th day of June, A.D. 1944.

J. A. CROSS, K.C., *Chief Commissioner.*
 HUGH WARDROPE, *Assistant Chief Commissioner.*
 G. A. STONE, *Commissioner.*
 F. M. MACPHERSON, *Commissioner.*

Whereas, in pursuance of Order No. 63716, dated June 29th, 1943, Licence Number C.T.C. (A.T.) 78, as amended by Order No. 64656, dated April 1, 1944, was issued to the Applicant for the period of one year commencing on July 9, 1943—

Therefore it is ordered: That a licence be issued to the Applicant for the period of one year commencing on July 9, 1944, in renewal of the said Licence Number C.T.C. (A.T.) 78.

HUGH WARDROPE,
Assistant Chief Commissioner.

ORDER No. 64959

In the matter of the application of Quebec Airways Limited, hereinafter called the "Applicant", under Section 13 of The Transport Act, 1938, for a licence to transport passengers and/or goods by air between Montreal, Three Rivers, Quebec, Rimouski, and Saguenay Airport, in the Province of Quebec.

File No. 42007.5.4

TUESDAY, the 13th day of June, A.D. 1944.

J. A. CROSS, K.C., *Chief Commissioner.*

J. A. STONEMAN, *Commissioner.*

G. A. STONE, *Commissioner.*

F. M. MACPHERSON, *Commissioner.*

Whereas, in pursuance of Order No. 63732, dated July 5, 1943, a licence was issued to the Applicant in renewal of Licence Number C.T.C. (A.T.) 36 for the period of one year commencing on July 10, 1943—

Therefore it is ordered: That a licence be issued to the Applicant for the period of one year commencing on July 10, 1944, in renewal of the said Licence Number C.T.C. (A.T.) 36.

J. A. CROSS,
Chief Commissioner.

ORDER No. 64963

In the matter of the application of Wings Limited, hereinafter called the "Applicant", under Section 13 of The Transport Act, 1938, for a licence to transport passengers and/or goods by air between Sioux Lookout, Doghole Bay, and Pickle Lake, in the Province of Ontario.

File No. 42007.19.3

WEDNESDAY, the 14th day of June, A.D. 1944.

J. A. CROSS, K.C., *Chief Commissioner.*

HUGH WARDROPE, *Assistant Chief Commissioner.*

J. A. STONEMAN, *Commissioner.*

F. M. MACPHERSON, *Commissioner.*

Whereas, in pursuance of Order No. 63717, dated June 29, 1943, a licence was issued to the Applicant in renewal of Licence Number C.T.C. (A.T.) 37 for the period of one year commencing on July 12, 1943—

Therefore it is ordered: That a licence be issued to the Applicant for the period of one year commencing on July 12, 1944, in renewal of the said Licence Number C.T.C. (A.T.) 37.

J. A. CROSS,
Chief Commissioner.

SUMMARY OF ORDERS ISSUED BY THE BOARD

- 64904 June 1—Dismissing application of township of Nipigon, Ont., to construct highway crossing over C.P.R., mile 63.35 Nipigon Subd.
- 64905 May 31—Approving clearances at C.P.R. Co's proposed cinder drainage disposal plant at Schreiber, Ont.
- 64906 May 31—Approving clearance at C.P.R. Co's proposed cinder drainage disposal plant at Chapleau, Ont.
- 64907 June 1—Declaring C.P.R. crossing of highway just east of Cherrywood Station, Ont., protected to Board's satisfaction.
- 64908 June 1—Declaring C.P.R. crossing of King and Adelaide streets, Chatham, Ont., protected to Board's satisfaction; speed limitation of ten miles per hour to be maintained.
- 64909 June 1—Recommending to Governor in Council for sanction agreement between the Canadian Northern Pacific Railway Co., The Canadian Northern Railway Co., C.N.R. Co., and the C.P.R. Co.
- 64910 June 1—Approving The Bell Telephone Co. of Canada Supplement No. 2 to agreement with Le Telephone Soulanges-Lionel Bissonette Proprietaire.
- 64911 June 1—Approving Revised Appendix "A" to agreement between The Bell Telephone Co. of Canada and Omer Lacoste (Le Telephone du Nord).
- 64912 June 2—Approving under Maritime Freight Rates Act tolls published in tariffs filed by the Dominion Atlantic Railway Company under Section 9.
- 64913 June 3—Fixing agreed charges for the transportation of lumber and forest products for Rustad Bros. from White Fox, Sask.
- 64914 June 3—Directing C.N.R. to install two flashing lights and one bell at highway crossing at mileage 30.80 Oakville Subd. Ont.
- 64915 June 2—Amending Order No. 64797 C.P.R. to construct branch line of railway to serve Marathon Paper Mills of Canada Ltd., District of Thunder Bay, Ont.
- 64916 June 5—Approving under Maritime Freight Rates Act tolls published in tariffs filed by Dominion Atlantic Railway Co. under Section 9.
- 64917 June 3—Approving plans of subway under tracks of the C.N.Rys' Eastern Junction-Bout de l'Île Line, Montreal North, Que.
- 64918 June 3—Apportioning cost of installing and maintaining flashing lights at crossing of Waterdown Road, Aldershot Station, Ont. (C.N.R.)
- 64919 June 6—Approving under Maritime Freight Rates Act tolls published in tariffs filed by C.N.R. under Section 3.
- 64920 June 6—Authorizing issuing of Licence to Mackenzie Air Service Ltd. in renewal of Licence No. C.T.C. (A.T.) 34.
- 64921 June 6—Declaring C.P.R. crossing of Park and Perry streets, Peterborough, Ont., protected to Board's satisfaction; speed limitation of ten miles per hour to be maintained.
- 64922 June 6—Declaring C.N.R. crossing of Aylmer street, Peterborough, Ont., protected to Board's satisfaction; speed limitation of ten miles per hour to be maintained.
- 64923 June 7—Approving under Maritime Freight Rates Act tolls published in tariffs filed by C.P.R. under Section 9.
- 64924 June 7—Approving under Maritime Freight Rates Act tolls published in tariffs filed by Dominion Atlantic Railway Co. under Section 9.
- 64925 June 7—Authorizing C.N.R. to connect new transfer tracks with tracks of New York Central Railroad Co. at Beauharnois, Que.
- 64926 June 5—Authorizing C.N.R. to construct, etc., wye track across Atwood avenue, Rainy River Ont.
- 64927 June 5—Authorizing C.N.R. crossing of public road at mileage 95.8 Val d'Or Sub-division, Que.
- 64928 June 5—Authorizing the New York Central Railroad Co. and the C.N.R. to operate their trains through interlocking plant at Yarmouth, Ont.
- 64929 June 5—Declaring C.P.R. crossing of highway about two miles north of Midhurst, Ont., mileage 69.25 MacTier Subd., protected to Board's satisfaction.
- 64930 June 8—Approving proposed location of unloading pipe, etc., of Victory Mills Ltd. near C.N.R., Toronto, Ont.
- 64931 June 5—Approving side clearance at siding serving McManus Petroleums Limited, Hamilton, Ont. (C.N.R.).
- 64932 June 7—Authorizing C.N.R. to construct highway diversion and crossing over wye in S.W. Quarter of Section 9, Township 9, Range 26, West Principal Meridian, Scarth, Man.
- 64933 June 7—Approving location storage tank of Imperial Oil Ltd., near C.P.R., Schuler, Alta.
- 64934 June 7—Approving location of storage tanks of Imperial Oil Ltd., near C.P.R. at Consort, Alta.

- 64935 June 7—Approving location of storage tank of Imperial Oil Ltd., near C.P.R. at Cayley, Alta.
- 64936 June 7—Approving amendment to agreement of B.C. Telephone Co. with The Pacific Telephone and Telegraph Co. *re* changes in basis of compensation for long distance messages.
- 64937 June 7—Amending Order No. 64759 *re* speed limitation at crossing of Olive Ave., Oshawa, Ont.
- 64938 June 9—Declaring C.N.R. crossing second north of Holland Landing, Ont., protected to Board's satisfaction.
- 64939 June 9—Approving Supplement No. 1 to agreement between The Bonaventure and Gaspé Telephone Co., Ltd., and the Dept. of National Defence.
- 64940 June 9—Authorizing C.P.R. to construct branch line of railway to serve Olympic Logging Co., Ltd., mileage 110.1 Victoria Subd., Vancouver Island, B.C.
- 64941 June 9—Declaring C.N.R. crossing of Sixth Ave. East, Prince Albert, Sask., protected to Board's satisfaction; speed limitation of ten miles per hour to be maintained.
- 64942 June 10—Declaring Montreal and Southern Counties Railway crossing, second east of Marierville Station, Que., protected to Board's satisfaction.
- 64943 June 12—Authorizing C.P.R. to amend its Tariff C.T.C. No. W-3895 on one day's notice, to correct an error.
- 64944 June 10—Approving Tariffic Agreement between The Bell Telephone Company of Canada and La Cie de Telephone Soulanges, Ltée.
- 64945 June 10—Declaring C.P.R. crossing of highway first north of station at Fort Garry, Man., protected to Board's satisfaction.
- 64946 June 10—Authorizing issuing of Licence to Yukon Southern Air Transport Limited in renewal of Licence No. C.T.C. (A.T.) 79.
- 64947 June 10—Authorizing C.N.R. to construct, etc., extension to industrial track in lane in Block 20, North Battleford, Sask.
- 64948 June 10—Approving location of unloading pipe, etc., of Square Deal Co-operative Association, Limited, near C.P.R. at Reston, Man.
- 64949 June 12—Approving clearances at C.P.R. Co's proposed cinder drainage disposal plant at White River, Ont.
- 64950 June 12—Authorizing issuing of Licence to Wings Limited, in renewal of Licence No. C.T.C. (A.T.) 35.
- 64951 June 10—Approving location of storage tank of Imperial Oil Ltd. near Northern Alberta Ry's. at Hythe, Alta.
- 64952 June 10—Approving location of storage tank of Imperial Oil Ltd. near Northern Alberta Ry's. Co. at Donnelly, Alta.
- 64953 June 10—Approving location of storage tank of Shell Oil Company of British Columbia, Ltd., near C.P.R. at Revelstoke, B.C.
- 64954 June 12—Authorizing issuing of Licence to Quebec Airways Limited, in renewal of Licence No. C.T.C. (A.T.) 78.
- 64955 June 10—Declaring C.N.R. crossing of highway near Regina, Sask., protected to Board's satisfaction.
- 64956 June 21—Amending Order No. 59027 *re* changes in interlocking plants of N.Y.C. (M.C.R.) at Windsor, Ont.
- 64957 June 12—Authorizing N.Y.C. (M.C.R. Co.) to operate its trains through interlocking plant at Tower No. 4, Windsor, Ont.
- 64958 June 12—Declaring C.N.R. crossing first east of Worby Siding, Man., protected to Board's satisfaction.
- 64959 June 13—Authorizing issuing of Licence to Quebec Airways Limited, in renewal of Licence No. C.T.C. (A.T.) 36.
- 64960 June 14—Approving location of temporary unloading manifold pipe line, etc., of British American Oil Company, Ltd., near C.N.R. at Montreal East, Que.
- 64961 June 13—Approving plan of proposed subway under tracks of C.N.R. at Papineau avenue, Montreal, Que.
- 64962 June 13—Authorizing C.P.R. to revise trackage already constructed serving Canadian Sugar Factories Ltd., mile 6.41 Cardson Subd., Alta.
- 64963 June 14—Authorizing issuing of Licence to Wings Limited, in renewal of Licence Number C.T.C. (A.T.) 37.
- 64964 June 14—Amending Order No. 64845 *re* location of storage tank, etc., of Imperial Oil Ltd. at Empress, Alta. (C.P.R.)
- 64965 June 15—Approving revised sheets of Tariff C.T.C. No. 25 of British Columbia Telephone Company.
- 64966 June 15—Declaring C.N.R. crossing of Church street, Parry Sound, Ont., protected to Board's satisfaction.
- 64967 June 15—Authorizing C.N.R. to construct spur to serve Union Tractor and Harvester Co., Ltd., along and across lanes in Block 6, Hudson Bay Reserve, Edmonton, Alta.

- 64968 June 15—Approving route map showing general location of The Kettle Valley Railway, from a point near Haynes, at mile 0 to a point at or near Osoyoos, at mile 10, B.C.
- 64969 June 16—Authorizing C.N.R. to construct extension of passing track across public road at Carlsbad Springs, Ont.
- 64970 June 16—Declaring St. Lawrence & Adirondack Railway (N.Y.C.) crossing first west of Huntingdon Station, Que., protected to Board's satisfaction.
- 64971 June 19—Authorizing Commissioner George A. Stone, in the absence of the Chief Commissioner and Asst. Chief Commissioner to sign regulations, etc., from June 20th to 22nd inclusive.
- 64972 June 16—Authorizing C.P.R. to construct branch line across Bond street, Galt, Ont.
- 64973 June 17—Authorizing C.N.R. and C.P.R. to operate their trains through interlocking plant at Norcran, Man.
- 64974 June 17—Approving plan showing proposed subway under tracks of C.N.R. at Sherbrooke street, Municipality of Pointe aux Trembles, Que.
- 64975 June 17—Authorizing C.N.R. and C.P.R. to operate their trains through interlocking plant at Portage la Prairie, Man.
- 64976 June 17—Declaring C.N.R. crossing first just east of Christmas Island Station, N.S., protected to Board's satisfaction.
- 64977 June 17—Authorizing C.N.R. to construct spur to serve Crown Paving & Construction Co., Ltd., along 121st street and across 119th, 120th, and 121st avenues, Edmonton, Alta.
- 64978 June 19—Approving proposed relocation of C.N.Rys' shelter at mileage 71-82 Chester Subd., N.S.
- 64979 June 19—Authorizing C.P.R. to construct branch line or railway to serve Canadian Oil Companies Ltd. at southeasterly boundary of Arthur street diversion, on Island No. 1, Fort William, Ont.
- 64980 June 19—Approving location and details of C.N.Rys' station at Nut Mountain, Sask.
- 64981 June 20—Declaring C.P.R. crossing of highway first east of Bourget Station, Ont., protected to Board's satisfaction.

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The Board of Transport Commissioners for Canada

Judgments, Orders, Regulations and Rulings

Vol. XXXIV

Ottawa, July 15, 1944

No.8

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ORDER No. 65015

In the matter of the application of L. E. Kipp, Agent, Western Trunk Lines, hereinafter called the "Applicant", for authority to amend his Tariff C.T.C. No. A-925 on short notice to correct an error.

File No. 27612.296

WEDNESDAY, the 28th day of June, A.D. 1944.

J. A. CROSS, K.C., *Chief Commissioner.*

HUGH WARDROPE, *Assistant Chief Commissioner.*

J. A. STONEMAN, *Commissioner.*

Whereas the Applicant desires to amend Sections 1 and 2 of item 3630-A contained in Supplements 8 and 12 to his Tariff C.T.C. No. A-925, published to become effective July 1, 1944, to provide for a continuance of the present restrictions limiting application to Column B rating on common and livestock salt as carried in item 3630 of the original tariff, similar permission having been granted by the Interstate Commerce Commission—

It is ordered: That the Applicant be, and he is hereby, permitted to amend his Tariff C.T.C. No. A-925 as aforesaid on one day's notice, effective July 1, 1944.

J. A. CROSS,
Chief Commissioner.

ACCIDENTS REPORTED TO THE OPERATING DEPARTMENT BOARD OF TRANSPORT COMMISSIONERS FOR CANADA, MAY, 1944

Railway Accidents	153	with 19 killed and 159 injured
Level Crossing Accidents.....	24	with 6 killed and 31 injured

Totals.....177 with 25 killed and 190 injured

	Killed	Injured
Passengers	1	28
Employees	9	120
Others	15	42
Totals.....	25	190

DETAILS OF ACCIDENTS AT HIGHWAY CROSSINGS

Accidents	K.	I.	
NOVA SCOTIA			
1	-	1	Automobile ran into side of train. Licence N.S. C-14842.
1	1	1	Automobile drove onto crossing in front of approaching train and was struck. Licence N.S. 61497.
QUEBEC			
1	1	4	Automobile struck Track Motor Car. Licence Que. 13-219.
1	-	1	Pedestrian passed under Gates in lowered position and was struck by train.
1	-	1	Automobile ran into side of train. Licence Que. 116-989.
ONTARIO			
1	-	1	Automobile drove onto crossing in front of approaching train and was struck. Licence Ont. 240-F-3.
1	-	1	Automobile ran into side of train. Licence Ont. 46-V-85.
1	-	6	Automobile ran into side of train. Licence Ont. 6-U-835.
1	-	1	Auto truck drove onto crossing in front of approaching train and was struck. Licence Ont. 66909-C.
1	-	1	Automobile drove onto crossing in front of approaching train and was struck. Licence Ont. 62264-C.
1	-	1	Automobile ran into side of train. Licence not given.
1	-	1	Farmer herding cattle on highway backed into side of train.
1	-	1	Automobile drove onto crossing in front of approaching train and was struck. Licence Ont. 43-V-51.
MANITOBA			
1	-	1	Auto truck ran into side of train. Licence Man. 6-875.
1	1	1	Automobile drove onto crossing in front of approaching train and was struck. Licence Man. 25-135.
1	1	-	Auto truck stalled on crossing and was struck by train. Licence Man. F.T. -987.
SASKATCHEWAN			
1	-	1	Auto truck drove onto crossing in front of approaching train and was struck. Licence Sask. C-2908.
1	1	-	Automobile drove onto crossing in front of approaching train and was struck. Licence Sask. 58-562.
1	-	1	Auto drove onto crossing in front of approaching train and was struck. Licence Sask. 10434.
ALBERTA			
1	-	1	Auto truck drove onto crossing in front of approaching train and was struck. Licence not given.
1	-	3	Automobile drove onto crossing in front of approaching train and was struck. Licence Alta. 24679.
1	-	1	Pedestrian disregarded Gate protection, walked onto crossing in front of approaching train and was struck.
BRITISH COLUMBIA			
1	-	1	Automobile drove onto crossing in front of approaching train and was struck. Licence B.C. 44-865.
1	1	-	Auto truck drove onto crossing in front of approaching train and was struck. Licence B.C. S-9287.

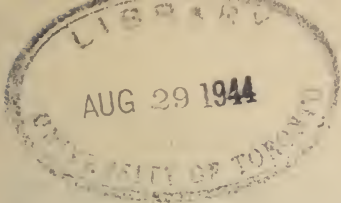
Of the 24 accidents at highway crossings, 22 occurred at Unprotected Crossings and 2 at Protected Crossings. Nineteen of the Accidents occurred after Sunrise and five after Sunset.

June 28, 1944.

SUMMARY OF ORDERS ISSUED BY THE BOARD

- 64982 June 19—Approving Supplement No. 3 to agreement between The Bell Telephone Co. of Canada and the Oro Telephone Co. Ltd.
- 64983 June 20—Authorizing C.P.R. to remove station agent at Deleau, Man. (Caretaker to be appointed.)
- 64984 June 19—Authorizing C.N.R. to replace mechanical interlocking plant at their crossing with C.P.R. near St. Cloud, Ontario, with power and distant signals.
- 64985 June 21—Declaring C.N.R. crossing first west of Brown Point Station, N.S., protected to Board's satisfaction.
- 64986 June 21—Authorizing C.P.R. to construct its tracks across Stony Creek Road and Aldridge Avenue, mileages 17·6, 18·7, and 18·8 Rossland Subd., B.C.
- 64987 June 21—Authorizing C.N.R. to construct spur to serve International Pork Packers, Ltd., across lane to the rear of Block 10, NW¼ of Sec. 19, Twp. 36, Rge. 5 W3M, R.M. of Cory, Sask.
- 64988 June 21—Approving crossing of public road by tracks of C.N.Ry's Rouyn-Senneterre line at mileage 40·8 Val d'Or Subd., P.Q.
- 64989 June 20—Approving under Maritime Freight Rates Act tolls published in tariffs filed by C.N.R. under Sec. 3.
- 64990 June 23—Authorizing New York Central Railroad Co. to operate its trains over interlocking plant at Windsor, Ont.
- 64991 June 21—Authorizing C.P.R. to construct branch line of railway to serve McCabe Bros. Grain Company, Ltd., at St. Boniface, Man.
- 64992 June 22—Approving location of storage tank etc. of Imperial Oil Ltd. near C.P.Ry. at McCord, Sask.
- 64993 June 22—Approving location of storage tanks, etc., of Imperial Oil Ltd. near C.N. Ry. at Eaton, Sask.
- 64994 June 22—Approving location of storage tank, etc., of Imperial Oil Ltd. near C.P.Ry. at Airdrie, Alta.
- 64995 June 22—Approving location of storage tanks, etc., of Imperial Oil Ltd. near C.P.Ry. at Cowley, Alta.
- 64996 June 22 Approving location of storage tank, etc., of McColl-Frontenac Oil Co., Ltd., near C.P.Ry. at Selkirk, Man.
- 64997 June 22—Approving location of storage tank, etc., of Imperial Oil Ltd., near Northern Alberta Rlys. at Lac la Biche, Alta.
- 64998 June 22—Approving location of storage tanks, etc., of McColl-Frontenac Oil Company, Ltd., near C.P.Ry. Co. at Winnipeg, Man.
- 64999 June 22—Authorizing C.N.R. to install automatic signal protection at mileage 10·96 Cromer Subd., Man.
- 65000 June 23—Authorizing C.N.R. to construct spur across lane between Lots 67 and 68, St. Boniface, Man.
- 65001 June 23—Authorizing New York Central Railroad Co. and the Niagara, St. Catharines and Toronto Railway Co. to operate their trains through Welland Draw-bridge.
- 65002 June 24—Approving clearances at Power House Coal Protection Shed and Oleum Building on Spur of Defence Industries Ltd. at Nobel, Ont. (C.P.R.)
- 65003 June 24 Declaring C.P.R. crossing of Howard Ave., Enderby, B.C. protected to the Board's satisfaction.
- 65004 June 24—Approving location and details of freight and passenger shelter at Maon, Man.
- 65005 June 24—Declaring Vancouver & Lulu Island Railway crossing of Oak Street, Vancouver, B.C. protected to Board's satisfaction.
- 65006 June 24—Authorizing C.N.R. to use and operate bridges at d'Argenson and Wellington Streets, and timber trestle over spur of Defence Industries Ltd., Montreal, Que.
- 65007 June 26—Amending Order No. 64918 authorizing the installation of flashing lights at crossing of Waterdown Road by C.N.R. east of Aldershot, Ont.
- 65008 June 26—Approving Appendix "A" to agreement between The Bell Telephone Co. of Canada and M. L. Davis, Proprietor. Davis Telephone System.
- 65009 June 25—Approving location of unloading rack, etc., of Shell Oil Company of Canada, Ltd., for handling of inflammable liquids of W. H. Graham at St. Mary's, Ont. (C.P.R.)

- 65010 June 26—Approving location of unloading rack, etc., of Imperial Oil Co. Ltd., near tracks of C.N.Rys. at Victoria Ave. at St. Lambert, Que.
- 65011 June 27—Approving under Maritime Freight Rates Act tolls published in tariffs filed by C.N.R. under Sec. 3.
- 65012 June 26—Approving Appendix "A" to agreement between The Bell Telephone Co. of Canada and The James MacLaren Co. Ltd.
- 65013 June 27—Declaring C.N.R. crossing immediately north of Lift Bridge, Ville St. Pierre, Que., protected to Board's satisfaction.
- 65014 June 28—Approving location of storage tank, etc., of McColl-Frontenac Oil Co. Ltd., near C.P.R. at Dominion City, Man.
- 65015 June 28—Authorizing L. E. Kipp, Agent, Western Trunk Lines, to amend his tariff C.T.C. No. A-925 on one day's notice, effective July 1, 1944.
- 65016 June 28—Approving relocation of unloading rack, etc., for handling and storage of inflammable liquids for the City of Montreal, Que. (C.P.R.).
- 65017 June 28—Authorizing C.N.R. to carry out changes to interlocking plant at interlocked crossing of their line with C.P.R. Co's Pheasant Hills Branch, Nokomis, Sask.
- 65018 June 28—Authorizing C.N.R. to carry out changes to interlocked crossing with C.P.R. at Knox, Man.
- 65019 June 28—Declaring C.P.R. crossing of highway 3.11 miles east of Apple Hill Station, Ont., protected to Board's satisfaction.
- 65020 June 29—Approving plans showing subway under tracks of C.N.Rys. at Persillier Boulevard, Montreal, Que.
- 65021 June 29—Authorizing Grand River Railway Co. to carry out changes to its interlocking plant at crossing with C.N.Rys. near Dundas and Beverly Streets, Galt, Ont.



The Board of Transport Commissioners for Canada

Judgments, Orders, Regulations and Rulings

Vol. XXXIV

Ottawa, August 1, 1944

No. 9

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ORDER No. 65023

In the matter of the application of the Dominion Atlantic Railway Company, hereinafter called the "Applicant Company", for permission to amend its Tariff C.T.C. No. 1179 on short notice to correct an error.

File No. 27612.237

MONDAY, the 3rd day of July, A.D. 1944.

J. A. CROSS, K.C., *Chief Commissioner.*

HUGH WARDROPE, *Assistant Chief Commissioner.*

J. A. STONEMAN, *Commissioner.*

Whereas, through error, in Section 3, Column H, of the Applicant Company's Tariff C.T.C. No. 1179, a rate of $8\frac{1}{2}$ cents per 100 pounds is published for 210 miles, instead of $18\frac{1}{2}$ cents per 100 pounds, and in order that the proper and intended rate may be applied, the Applicant Company desires to make correction on less than statutory notice—

It is ordered: That the Applicant Company be, and it is hereby, permitted to amend its Tariff C.T.C. No. 1179 as aforesaid, effective on one day's notice.

J. A. CROSS,
Chief Commissioner.

ORDER No. 65045

In the matter of the application of Wings Limited, hereinafter called the "Applicant", under Section 13 of the Transport Act, 1938, for a licence to transport passengers and/or goods by air between Ilford and Gods Lake, in the Province of Manitoba.

File No. 42007.19.8

FRIDAY, the 7th day of July, A.D. 1944.

J. A. CROSS, K.C., *Chief Commissioner.*

HUGH WARDROPE, *Assistant Chief Commissioner.*

J. A. STONEMAN, *Commissioner.*

F. M. MACPHERSON, *Commissioner.*

Whereas, in pursuance of Order No. 63807, dated July 27, 1943, a licence was issued to the Applicant in renewal of Licence Number C.T.C. (A.T.) 38 for the period of one year commencing on August 4, 1943—

Therefore it is ordered: That a licence be issued to the Applicant for the period of one year commencing on August 4, 1944, in renewal of the said Licence Number C.T.C. (A.T.) 38.

J. A. CROSS,
Chief Commissioner.

SUMMARY OF ORDERS ISSUED BY THE BOARD

- 65022 June 29—Directing C.N.R. to install two flashing light signals and one pedestrian bell at crossing of Cawthra Road, mileage 11·46 Oakville Subd., Ont.
- 65023 July 3—Authorizing Dominion Atlantic Railway Co. to amend its Tariff C.T.C. No. 1179 on short notice to correct an error.
- 65024 June 29—Directing C.P.R. to install two flashing light signals and one bell at crossing of Highway No. 15 (Franktown Road) south of Carleton Place Station, Ont.
- 65025 June 30—Declaring C.N.R. crossing at 96th Street, Edmonton, Alta., protected to Board's satisfaction; speed limitation of ten miles per hour to be maintained.
- 65026 June 30—Approving relocation of Nipissing Central Railway Co's main track entrance into station yard at Rouyn, P.Q., and of railway grade crossing over C.N.Rys. Senneterre Subd.
- 65027 June 30—Authorizing Dept. of National Defence, Naval Service, to lay a 2-inch water pipe under tracks of C.N.R., at mileage 113·34 Skeena Subd., Ridley Island, B.C.
- 65028 July 3—Approving clearances at C.N.R. siding serving Silverwood Dairies Limited, London, Ontario.
- 65029 July 4—Amending Order No. 64568, dated March 10, 1944, relieving C.P.R. from erecting and maintaining cattle guards at highway crossing between mileage 15·03 and 27·53 St. Gabriel Subd., P.Q.
- 65030 July 4—Declaring C.N.R. crossing south of Haylake Station, Alta., protected to Board's satisfaction.
- 65031 July 5—Approving location of pipe lines, etc., of Great West Distributors Limited near C.N.Rys. at Fort Kent, Alta.
- 65032 July 5—Declaring C.P.R. crossing of Trancred Street, Sault Ste. Marie, Ont., protected to Board's satisfaction; speed limitation of ten miles per hour to be maintained.
- 65033 July 5—Approving location of pipe lines, etc., of Canadian Oil Companies Limited near C.P.R. at Fort William, Ont.
- 65034 July 5—Authorizing C.N.R. to carry out changes at interlocking plant at their crossing with C.P.R. at Regina, Sask.
- 65035 July 5—Declaring C.N.R. crossing first west of Marshy Hope Station, N.S. protected to Board's satisfaction.
- 65036 July 6—Approving location of pipe lines, etc., of McColl-Frontenac Oil Company, Limited near C.N.Rys. at Goderich, Ont.
- 65037 July 5—Extending time within which to install flashing lights and bell at crossing of highway at mileage 7·52 Harcourt Subd., N.B. (C.N.R.).
- 65038 July 6—Declaring C.N.R. crossing of Main Street, Newburgh, Ont., protected to Board's satisfaction.
- 65039 July 5—Authorizing C.N.R. to construct spur to serve Havanah Collieries at mileage 18·37 Bienfait Subd., Sask.
- 65040 July 6—Declaring C.N.R. crossing of rue de la Montagne, Saint Tite, P.Q., protected to Board's satisfaction.
- 65041 July 6—Declaring C.P.R. crossing first east of Horizon Station, Sask., protected to Board's satisfaction.
- 65042 July 6—Relieving C.P.R. from maintaining cattle guards at mileage 3·08, 3·54, 5·51, 6·66, and 7·53 Piles Subd., P.Q.
- 65043 July 6—Approving clearance at pump house on siding serving the Brantford Roofing Company, Ltd., Brantford, Ont. (C.N.R.).
- 65044 July 7—Approving clearances at sidings serving Longfield Brothers Ltd. and Steer and Marr at Mount Brydges, Ont. (C.N.R.).
- 65045 July 7—Authorizing issuing of Licence to Wings Limited, in renewal of Licence No. C.T.C. (A.T.) 38.
- 65046 July 7—Directing C.N.R. to install flashing light signals and bell at crossing of St. Germain St., Rimouski, Que.
- 65047 July 8—Declaring C.P.R. crossing of highway in the Village of Verner, Ont., mileage 33·7 Cartier Subd., protected to Board's satisfaction.
- 65048 July 11—Approving under Maritime Freight Rates Act tolls published in tariffs filed by the C.N.R. under Section 3.

- 65049 July 11—Approving under Maritime Freight Rates Act tolls published in tariffs filed by The Dominion Atlantic Rly. Co., under Section 9.
- 65050 July 12—Authorizing reconstruction of Bridge No. 83·18 Nelson Subd., over the Kootenay River at Kootenay Landing, B.C. (C.P.R.).
- 65051 July 12—Authorizing the construction of railway siding across public road in Section 10, Range 2, Quamichan District, mileage 0·41 Tidewater Subd., near Deerholme, B.C. (C.N.R.).
- 65052 July 12—Approving location of portion of Kettle Valley Rly., from Penticton to International Boundary, mileage 26·80 to 36·38.
- 65053 July 11—Approving clearances at Midland Railway Company spur serving the Paulin Chambers Company, Ltd., at Winnipeg, Man.
- 65054 July 11—Authorizing C.P.R. to construct branch line to serve Edward Lipsett Ltd., at Vancouver, B.C.
- 65055 July 12—Declaring C.N.R. crossing west of Smiths Falls Station, Ont., protected to Board's satisfaction.
- 65056 July 12—Approving The Bell Telephone Company of Canada Supplement No. 1 to agreement with La Cie de Telephone Soulanges, Ltee.
- 65057 July 12—Authorizing C.N.R. to reconstruct bridge over Boyne River at mileage 68·1 Carman Subd., Manitoba.
- 65058 July 12—Authorizing C.P.R. to construct branch line of railway to serve Federal Grain Limited, on Higgins Ave., Winnipeg, Manitoba.
- 65059 July 12—Authorizing approval of plan showing proposed relocation of automatic bell and wigwag at crossing of Edmonton-Jasper main highway, at east end of Edson station grounds, Alberta.
- 65060 July 13—Declaring C.N.R. crossing first west of Paddockwood Junction, Sask., protected to Board's satisfaction.
- 65061 July 13—Approving clearances of proposed crane runway on siding serving Canadian Line Materials Limited at Scarboro, Ont. (C.N.R.).
- 65062 July 13—Declaring C.N.R. crossing at Ste. Claire Road, Quebec West, Quebec, mileage 12·2 Bridge Subd., protected to satisfaction of the Board.
- 65063 July 14—Authorizing C.N.R. to construct additional siding to serve Canada Cable Company, Ltd., along Wicksteed Ave., and across Clark St., Leaside, Ont.



The Board of Transport Commissioners for Canada

Judgments, Orders, Regulations and Rulings

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Application of the Municipal Council of the City of Thetford Mines, in the Province of Quebec, for an Order directing that the existing private level crossing running from Notre Dame Street to "O'Meara Ward, or Tipperary", in the City of Thetford Mines, in the Province of Quebec, across the Quebec Central Railway, be made a public crossing.

File 43872.

Heard at Thetford Mines, P.Q., June 20, 1944.

Mr. L. G. PREVOST, K.C., appeared for the Quebec Central Ry.
Mr. LUCIEN DROLET, K.C., for the City of Thetford Mines.

JUDGMENT

STONEMAN, COMMISSIONER:

This matter first came to the attention of the Board by way of letter dated August 16, 1943, enclosing a resolution signed by the Mayor and Secretary-Treasurer of the City of Thetford Mines, P.Q.

After considerable correspondence, the Board's District Engineer, Mr. George Kydd, made an inspection November 9, 1943, and a report to the Board dated November 11, 1943. Further correspondence took place between the Board and the Secretary-Treasurer of the City of Thetford Mines and finally the matter was set down for hearing, in the City of Thetford Mines, on Tuesday, June 20, 1944.

The application is for an Order directing conversion of the private level crossing running from Notre Dame Street to the said "O'Meara Ward, or Tipperary" to a public crossing.

The evidence heard at the sittings on June 20, 1944, on behalf of the City, is to the effect that O'Meara's land on the east side of the railway has been subdivided, a number of lots sold and residences erected. The private crossing,

or "O'Meara Crossing" is located at Mileage 68.70, Quebec Subdivision of the Quebec Central Railway, and the crossing situated on Lot 24 at Mileage 68.70 has been used as a private crossing since 1908. The Subdivision provides a roadway 66 feet wide on the East side of the proposed crossing, and Lt.-Colonel J. S. O'Meara owns a strip of land 22 feet wide on the West side of the proposed crossing, connecting with Highway No. 1, or Notre Dame Street on the west side of the Railway. While this 22 foot strip of land is owned by Lt.-Colonel O'Meara, he states, (page 512 of the evidence) that he will deed this strip of land to the City at once free of charge.

The Mayor of the City was asked, if it was the intention of the City to widen the 22 foot strip of land and make it a proper street. On page 523 of the evidence he says—"I should think if we get it we will try, as best we can to widen the street and have that a residential place. So far as I am concerned, I am ready to spend quite a few dollars on it."

There is one other public crossing at St. Alphonse Street 2,800 feet from the proposed crossing, and a private crossing leading to the Golf Club approximately 900 feet from the proposed site.

The Railway Company object to the opening of a public crossing at the proposed site, because of the Lipsey Siding 2,733 feet in length which is used for storing cars. Also on the ground that not only would it be an inconvenience, because of the necessity of cutting the string of cars, but sight lines would not be long enough and the crossing would therefore be dangerous.

The Railway Company admit that a public crossing should be established to give access to what is known as "O'Meara Subdivision", but suggests the site should be some 200 feet south of the Golf Club private crossing.

In summing up, by way of argument, Counsel for the Applicant points out that the Applicant has selected the only site which would give a right of way convenient to the residents and public wishing to reach O'Meara Subdivision; and undertakes on behalf of the City to acquire the necessary public roadway leading to the proposed crossing between the right of way and Highway No. 1, or Notre Dame Street. He further points out that the "Stop" law applies in the Province of Quebec and enforcement of this law would eliminate the danger at the crossing.

The Board, while in the City of Thetford Mines, viewed the whole situation on the ground.

In my opinion the application should be granted if the necessary steps are taken to provide a suitable public roadway leading to the crossing from the West side of the Railway, with "Stop" signs erected.

An Order authorizing the crossing will therefore issue as soon as the City has established the public roadway and has erected the "Stop" signs. The Railway Company to be prohibited from leaving cars standing on the Lipsey Siding 200 feet north or south of the proposed crossing. The cost of construction and maintenance of the crossing to be borne by the Applicant in accordance with the usual application of the Senior and Junior rule.

Ottawa, July 21st, 1944.

J. A. STONEMAN.

I concur

J. A. CROSS.

HUGH WARDROPE.

Requête du conseil municipal de la cité de Thetford Mines, P.Q., demandant qu'il soit ordonné que le passage à niveau privé actuel, à l'intersection du chemin de fer Québec Central, reliant la rue Notre-Dame au "quartier O'Meara" ou "Tipperary", en la cité de Thetford Mines, P.Q., soit converti en passage de voie publique.

Dossier n° 43872.

Entendue à Thetford Mines, P.Q., le 20 juin 1944.

Me L.-G. PRÉVOST, C.R., comparut pour le chemin de fer Québec Central.

Me LUCIEN DROLET, C.R., pour la cité de Thetford Mines.

JUGEMENT

STONEMAN, COMMISSAIRE:

Cette affaire fut d'abord soumise à l'attention de la Commission par lettre, en date du 16 août 1943, à laquelle était annexée une résolution signée par le maire et le secrétaire-trésorier de la cité de Thetford Mines, P.Q.

Après échange d'une correspondance assez considérable, l'ingénieur de district de la Commission, M. Geo. Kydd, fit une inspection le 9 novembre 1943 après quoi il fit rapport à la Commission le 11 novembre 1943. Une nouvelle correspondance fut par la suite échangée entre la Commission et le secrétaire-trésorier de la cité de Thetford Mines, et l'affaire fut finalement inscrite sur le rôle pour être instruite en la cité de Thetford Mines, mardi le 20 juin 1944.

La requête demande qu'il soit ordonné de convertir le passage privé qui relie la rue Notre-Dame au "quartier O'Meara" ou "Tipperary" en un passage de voie publique.

La preuve soumise à l'audience du 20 juin 1944 au nom de la cité démontre que le terrain du "quartier O'Meara" du côté est du chemin de fer a été subdivisé et qu'un certain nombre de lots ont été vendus et des maisons privées construites. Le passage privé ou "passage O'Meara" est situé au mille 68.70, subdivision de Québec du chemin de fer Québec Central, et ledit passage situé sur le lot 24 audit mille 68.70 est utilisé comme passage privé depuis 1908. Le plan de subdivision pourvoit à une chaussée de 66 pieds de large du côté est du passage projeté, et le lieutenant-colonel J.-S. O'Meara possède une lisière de terrain de 22 pieds de large du côté ouest du passage projeté qui se relie avec la route n° 1 ou la rue Notre-Dame, du côté ouest du chemin de fer. Le lieutenant-colonel O'Meara à qui cette lisière de terrain de 22 pieds de large appartient déclare (voir page 512 de la preuve) qu'il est prêt à céder immédiatement à titre gratuit cette lisière de terrain à la cité.

On a demandé au maire de la cité si c'était l'intention de celle-ci d'élargir cette lisière de terrain de 22 pieds et d'en faire une rue convenable. A la page 523 de la preuve, il dit — "Je crois que si nous obtenons cette lisière, nous essaierons de faire de notre mieux pour élargir la rue et pour faire de cet endroit un endroit de résidences. Autant que je suis concerné, je suis disposé à dépenser un assez bon montant d'argent à ce sujet".

Il y a un autre passage de voie publique à la rue St-Alphonse, à 2,800 pieds du passage projeté, et un passage privé qui conduit au club de golf à environ 900 pieds du site projeté.

La compagnie de chemin de fer s'oppose à l'ouverture d'un passage de voie publique sur le site projeté à cause de la voie d'évitement Lipsey de 2,733 pieds de long qui est utilisée comme voie de garage. Un autre motif d'opposition de la part du chemin de fer consiste dans le fait que le passage projeté constituerait un inconvénient non seulement à cause de la nécessité de couper les suites de wagons mais parce que les rayons de vue ne seraient pas assez considérables et que le passage serait, en conséquence, dangereux.

La compagnie de chemin de fer admet qu'un passage de voie publique devrait être établi pour donner accès à ce qui est connu sous le nom de subdivision O'Meara mais suggère que le site dudit passage devrait être à environ 200 pieds au sud du passage privé du club de golf.

Pour résumer, le procureur de la requérante signala dans son plaidoyer que la cité avait choisi le seul site pouvant procurer un droit de passage convenable aux résidents et au public désirant se rendre à la subdivision O'Meara; et il s'engagea au nom de la cité de faire construire le chemin public nécessaire pour se rendre au passage projeté entre l'emprise du chemin de fer et la route n° 1 ou rue Notre-Dame. Il signala de plus que la Loi relative à l'arrêt des véhicules aux passages à niveau s'applique dans la province de Québec et que sa mise en vigueur éliminerait les dangers à ce passage.

La Commission a fait un examen de toute la situation sur les lieux mêmes lorsqu'elle a siégé en la cité de Thetford Mines.

A mon avis, la requête devrait être accordée si des mesures nécessaires sont prises pour procurer un chemin public convenable conduisant au passage, du côté ouest du chemin de fer, avec signaux d'arrêt dûment installés.

Une ordonnance autorisant le passage en question sera, en conséquence, émise aussitôt après que la cité aura construit le chemin public en question et érigé les signaux d'arrêt. Il sera interdit à la compagnie de chemin de fer de laisser des wagons sur la voie d'évitement Lipsey en dedans de 200 pieds au nord et au sud du passage projeté. Les frais de construction et d'entretien du passage devront être assumés par la requérante conformément à l'application ordinaire de la règle "senior" et "junior".

J. A. STONEMAN.

Ottawa, le 21 juillet 1944.

J'agréé,

J. A. CROSS,
HUGH WARDROPE.

ORDER No. 65068

In the matter of the application of The Express Traffic Association of Canada, hereinafter called the "Applicant," on behalf of the Canadian Pacific Express and Canadian National Railways Express Department, for permission to publish rates on less than statutory notice.

File No. 27612.254

SATURDAY, the 15th day of July, A.D. 1944.

J. A. CROSS, K.C., *Chief Commissioner.*
HUGH WARDROPE, *Assistant Chief Commissioner.*
J. A. STONEMAN, *Commissioner.*

Upon the report and recommendation of the Assistant Director, Traffic Department of the Board—

It is ordered: That the Applicant be, and it is hereby, authorized to issue, effective this date, supplements to Canadian Pacific Tariff C.T.C. No. 1998 and Canadian National Tariff C.T.C. No. 1205 publishing carload rates on fruits and vegetables from British Columbia points to London, Ontario.

J. A. CROSS,
Chief Commissioner.

ORDER No. 65067

In the matter of the application of Northern Airways Limited, hereinafter called the "Applicant," under Section 13 of The Transport Act, 1938, for a licence to transport by air passengers and/or goods between Atlin, British Columbia, and Carcross, in the Yukon Territory.

File No. 42007.18

MONDAY, the 17th day of July, A.D. 1944.

J. A. CROSS, K.C., *Chief Commissioner.*

HUGH WARDROPE, *Assistant Chief Commissioner.*

J. A. STONEMAN, *Commissioner.*

G. A. STONE, *Commissioner.*

F. M. MACPHERSON, *Commissioner.*

Whereas, in pursuance of Order No. 63833, dated August 2, 1943, a licence was issued to the Applicant in renewal of Licence Number C.T.C. (A.T.) 41 for the period of one year commencing on August 14, 1943—

Therefore it is ordered: That a licence be issued to the Applicant for the period of one year commencing on August 14, 1944, in renewal of the said Licence Number C.T.C. (A.T.) 41.

J. A. CROSS,

Chief Commissioner.

ORDER No. 65069

In the matter of the application of Northern Airways Limited, hereinafter called the "Applicant," under Section 13 of The Transport Act, 1938, for a licence to transport by air passengers and/or goods between Atlin and Telegraph Creek, in the Province of British Columbia.

File No. 42007.18.5

MONDAY, the 17th day of July, A.D. 1944.

J. A. CROSS, K.C., *Chief Commissioner.*

HUGH WARDROPE, *Assistant Chief Commissioner.*

J. A. STONEMAN, *Commissioner.*

G. A. STONE, *Commissioner.*

F. M. MACPHERSON, *Commissioner.*

Whereas, in pursuance of Order No. 63834, dated August 2, 1943, a licence was issued to the Applicant in renewal of Licence Number C.T.C. (A.T.) 42 for the period of one year commencing on August 14, 1943—

Therefore it is ordered: That a licence be issued to the Applicant for the period of one year commencing on August 14, 1944, in renewal of the said Licence Number C.T.C. (A.T.) 42.

J. A. CROSS,

Chief Commissioner.

ORDER No. 65071

In the matter of Agreed Charge between the Canadian National Railways, Canadian Pacific Railway Company, Northern Alberta Railways Company and certain shippers covering transportation of lumber and forest products between stations in Western Canada, specified therein, approved by Order No. 59787 dated October 18, 1940.

File No. 40994.13

WEDNESDAY, the 19th day of July, A.D. 1944.

J. A. CROSS, K.C., *Chief Commissioner.*HUGH WARDROPE, *Assistant Chief Commissioner.*J. A. STONEMAN, *Commissioner.*

Whereas the Pine River Lumber and Supply Co., Ltd., of Dawson Creek, British Columbia, has made application under subsection (6) of Section 35 of The Transport Act, 1938, and represented to the Board that its business will be unjustly discriminated against unless a similar charge be fixed for the transport of its lumber and forest products, and has expressed its willingness to meet and comply with the provisions and conditions of the said Agreed Charge—

It is ordered: That the agreed charges approved by the said Order No. 59787, dated October 18, 1940, be, and they are hereby, fixed for the transport by the said railways of lumber and forest products, as described in paragraph B of the said Agreed Charge, for the Pine River Lumber and Supply Co., Ltd., from Dawson Creek, British Columbia, to the stations referred to in paragraph C(2) of the said Agreed Charge, subject to and upon the terms and conditions contained in the said Agreed Charge; and the Board hereby appoints the date of this Order as the date on which the said charges fixed as aforesaid are to come into operation.

J. A. CROSS,

Chief Commissioner.

ORDER No. 65074

In the matter of the application of Mackenzie Air Service Limited, hereinafter called the "Applicant," under Section 13 of The Transport Act, 1938, for a licence to transport passengers and/or goods by air between Goldfields, in the Province of Saskatchewan, and Yellowknife, in the Northwest Territories.

File No. 42007.14.4

WEDNESDAY, the 19th day of July, A.D. 1944.

J. A. CROSS, K.C., *Chief Commissioner.*HUGH WARDROPE, *Assistant Chief Commissioner.*J. A. STONEMAN, *Commissioner.*

Whereas, in pursuance of Order No. 63852, dated August 6, 1943, a licence was issued to the Applicant in renewal of Licence Number C.T.C. (A.T.) 43 for the period of one year commencing on August 15, 1943—

Therefore it is ordered: That a licence be issued to the Applicant for the period of one year commencing on August 15, 1944, in renewal of the said Licence Number C.T.C. (A.T.) 43.

J. A. CROSS,

Chief Commissioner.

ORDER No. 65100

In the matter of the application of The Bell Telephone Company of Canada, hereinafter called the "Applicant Company" for permission to amend its tariff C.T.C. No. 6716 on short notice to correct an error.

File No. 27612.297

TUESDAY, the 25th day of July, A.D. 1944.

J. A. CROSS, K.C., *Chief Commissioner.*

HUGH WARDROPE, *Assistant Chief Commissioner.*

J. A. STONEMAN, *Commissioner.*

F. M. MACPHERSON, *Commissioner.*

Whereas the Applicant Company advises that, through typographical error on 20th Revised Sheet 5 of Part III, Section 4 of its General Tariff C.T.C. No. 6716, the night and Sunday rate for service from Zone 1 to Panama is shown as \$7.25 instead of the correct rate of \$7.50, and in order that the proper and intended rate may apply, the Applicant Company desires to make correction on short notice—

It is ordered: That the Applicant Company be, and it is hereby, permitted to amend its Tariff C.T.C. No. 6716 as aforesaid on one day's notice.

J. A. CROSS,

Chief Commissioner.

ACCIDENTS REPORTED TO THE OPERATING DEPARTMENT BOARD OF TRANSPORT COMMISSIONERS FOR CANADA, JUNE, 1944

Railway Accidents.. . . .	176	with 25 killed and 190 injured
Level Crossing Accidents.. . . .	15	with 6 killed and 22 injured
Totals.. . . .	191	with 31 killed and 212 injured

	Killed	Injured
Passengers.. . . .	1	28
Employees.. . . .	9	153
Others.. . . .	21	31
Totals.. . . .	31	212

DETAILS OF ACCIDENTS AT HIGHWAY CROSSINGS

Accidents	K.	I.	
NOVA SCOTIA			
1	1	-	Pedestrian walked into side of engine.
QUEBEC			
1	-	9	Auto Bus drove onto crossing in front of approaching train and was struck. Licence Que.A-533.
1	1	-	Automobile attempted to beat train over crossing, passenger opened door of automobile and fell onto crossing in front of approaching train and was struck. Licence Que.153-715.
1	-	1	Automobile ran into side of train. Licence Que.107-876.
ONTARIO			
1	-	1	Automobile ran into side of train. Licence Ont. 2-K-262.
1	-	2	Automobile ran into side of train. Licence Ont. 118-X-2.
1	1	-	Automobile drove onto crossing in front of approaching train and was struck. Licence Ont. 9-M-969.
1	-	1	Auto Truck passing over crossing directly in front of train, occupant of Trailer fell or jumped into path of approaching train and was struck. Licence Ont. 33424-C.
1	-	1	Auto truck ran into side of train. Licence Ont. 83013-C.
1	-	1	Automobile drove onto crossing in front of approaching train and was struck. (Defective brakes.) Licence Ont. 39-U-5.
1	2	-	Automobile drove onto crossing in front of approaching train and was struck. Licence Ont. 329-Y-3.
1	1	-	Elderly pedestrian entering the cross-over in front of approaching train and was struck.
SASKATCHEWAN			
1	-	2	Automobile drove onto crossing in front of approaching train and was struck. Licence Sask. 12517.
BRITISH COLUMBIA			
1	-	1	Pedestrian moved too close to track and was struck by train.
1	-	3	Army Jeep drove onto crossing in front of approaching train and was struck. Licence N-272.

Of the 15 accidents at highway crossings, 13 occurred at Unprotected Crossings and 2 at Protected Crossings. Eight of the Accidents occurred after Sunrise and seven after Sunset.

July 27, 1944.

SUMMARY OF ORDERS ISSUED BY THE BOARD

- 65064. July 13—Authorizing Dept. of Roads for Que. to relocate existing level crossing of Highway No. 39, Twp. of Shefford, P.Q., at mileage 17.65 Drummondville Subd. (C.P.R.)
- 65065. July 15—Approving under Maritime Freight Rates Act tolls published in tariffs filed by C.N.R. under Sec. 3.
- 65066. July 17—Declaring Toronto, Hamilton & Buffalo Railway crossing of Lees Road, second public crossing east of Stoney Creek, Ont., protected to the Board's satisfaction.
- 65067. July 17—Authorizing issuing of Licence to Northern Airways Limited, in renewal of Licence No. C.T.C. (A.T.) 41.
- 65068. July 15—Authorizing The Express Traffic Association of Canada to issue supplements to C.P. Tariff C.T.C. No. 1998 and C.N. Tariff C.T.C. No. 1205. (Rates on fruits and vegetables.)
- 65069. July 17—Authorizing issuing of Licence to Northern Airways Limited, in renewal of Licence No. C.T.C. (A.T.) 42.
- 65070. July 17—Declaring C.N.R. crossing of Highway No. 19 and 19A, first west of Garneau Station, Que., protected to Board's satisfaction.
- 65071. July 19—Approving Agreed Charge for the transportation of lumber and forest products shipped by Pine River Lumber & Supply Co., Ltd., from Dawson Creek, B.C.
- 65072. July 19—Approving under Maritime Freight Rates Act tolls published in tariffs filed by C.N.R. under Section 3.
- 65073. July 19—Authorizing C.P.R. to construct branch line of railway to serve I. F. Corbett, at mileage 48.7 Coquihalla Subd., B.C.
- 65074. July 19—Authorizing issuing of Licence to Mackenzie Air Service Ltd., in renewal of Licence No. C.T.C. (A.T.) 43.
- 65075. July 19—Approving plan showing installation at crossing of Graham street, West Lorne, Ont. (New York Central Railroad.)
- 65076. July 19—Authorizing C.P.R. to construct extension of branch line of railway to serve the Washington Fuel Co. in Municipality of East Kildonan, Man.
- 65077. July 19—Authorizing C.P.R. to construct extension to branch line of railway to serve Robert Roswell Broder in the city of Lethbridge, Alta.
- 65078. July 19—Authorizing Quebec Central Railway Co. to construct a branch line of railway to ballast pit in Lot No. 266, Twp. of Broughton, County of Beauce, P.Q.
- 65079. July 19—Authorizing C.N.Rys. to use and operate bridge at mileage 76.0 Drumheller Subd., Alta.
- 65080. July 19—Declaring C.N.Rys. Bridgeport Spur crossing of Guelph street, Kitchener, Ont., protected to Board's satisfaction; present speed limitation of ten miles per hour to be maintained and all movements on siding be flagged by a member of the crew.
- 65081. July 20—Authorizing Esquimalt & Nanaimo Railway Co. to construct branch line of railway and siding to serve Bloedel, Stewart & Welch Ltd., near Sproat Lake, B.C.
- 65082. July 20—Declaring C.N.R. crossing of Prince street at Sydney, N.S., protected to Board's satisfaction; crossing to be protected by watchman at certain hours. and speed restriction of ten miles per hour to be maintained.
- 65083. July 20—Declaring C.N.R. crossing of Neebing Ave., Fort William, Ont., protected to Board's satisfaction; speed limitation of ten miles per hour to be maintained.
- 65084. July 20—Declaring C.N.R. crossing of Toll Gate Road, two miles west of Brantford, Ont., protected to Board's satisfaction.
- 65085. July 21—Authorizing C.N.Rys. to operate the bridges on their Harte Subd., Manitoba District, at different mileages.
- 65086. July 21—Authorizing C.N.Rys. to operate the bridges on their Carman Subd., Manitoba District, at different mileages.
- 65087. July 21—Authorizing C.N.Rys. to operate the bridges on their Oakland Subd., Manitoba District, at different mileages.
- 65088. July 21—Authorizing C.N.Rys. to operate the bridges on their Miami Subd., Manitoba District, at different mileages.

- 65089. July 21—Authorizing C.N.Rys. to operate the bridges on their Oakpoint Subd., Manitoba District, at different mileages.
- 65090. July 21—Authorizing C.N.Rys. to use and operate bridges at Mile 71.4 and 79.4 Inwood Subd., Manitoba District.
- 65091. July 21—Authorizing C.N.Rys. to use and operate bridges at Mile 0.8 and 1.0 Steep Rock Subd., Manitoba District.
- 65092. July 21—Authorizing C.N.Rys. to use and operate bridges in Winnipeg Terminals Division and on Oak Point Subdivision, within Winnipeg Terminals Division.
- 65093. July 21—Authorizing C.N.Rys. to use and operate bridges on their Gladstone Subd., Manitoba District, at different mileages.
- 65094. July 21—Authorizing C.N.Rys. to use and operate bridges on their Pine Falls Subd., Manitoba District, at different mileages.
- 65095. July 21—Authorizing C.N.Rys. to use and operate bridges on their Letellier Subd., Manitoba District, at different mileages.
- 65096. July 21—Authorizing C.N.Rys. to use and operate bridges on their Victoria Beach Subd., Manitoba District, at different mileages.
- 65097. July 21—Authorizing C.N.Rys. to use and operate bridges on their Minaki Subd., Manitoba District, at different mileages.
- 65098. July 21—Declaring C.P.R. crossing of the Junction of Wellington and John streets, Sault Ste. Marie, Ont., protected to Board's satisfaction; speed limitation of ten miles per hour to be maintained.
- 65099. July 21—Approving under Maritime Freight Rates Act tolls published in tariffs filed by C.P.R. under Sec. 9.
- 65100. July 25—Authorizing The Bell Telephone Co. of Canada to amend its tariff C.T.C. No. 6716 on short notice to correct an error.
- 65101. July 22—Directing C.P.R. to instal two flashing light signals and one bell at crossing of Main street at Buckingham Junction, P.Q.
- 65102. July 29—Approving location of pipe lines, etc., of McColl-Frontenac Oil Company Ltd. near C.N.Rys. at Stayner, Ont.
- 65103. July 24—Authorizing C.P.R. to construct cross-over track to serve the Department of National Defence, Western Air Command, in Kitsilano Indian Reserve, Vancouver, B.C.
- 65104. July 25—Declaring C.N.R. crossing of the intersection of Simcoe Subd. and John street, Simcoe, Ont., protected to Board's satisfaction.
- 65105. July 25—Prescribing a speed limitation of ten miles per hour for movements over the lines of the C.N.Rys. at all highway crossings, except crossing of Norfolk St., in the town of Simcoe, Ont.
- 65106. July 25—Authorizing C.N.R. to construct spur across Main street, village of Hague, Sask., to serve Hague Flour Mills.
- 65107. July 26—Authorizing the Pere Marquette Railway Co. to construct a second track across the public highway between Lots 38 and 39, Twp. of Southwold, County of Elgin, Ont.
- 65108. July 26—Dismissing complaint of Joseph Michaud in respect to the condition of a drainage ditch near Riviere-du-Loup, Que. (C.N.R.)
- 65109. July 26—Approving Supplement No. 3 to Agreement between The Bell Telephone Co. of Canada and the Commissioners for the Telephone System of the Municipality of the Township of North Easthope.
- 65110. July 26—Approving changes to interlocking plant at Windmill Point, Montreal, Que. (C.N.Rys.)
- 65111. July 27—Approving location and layout of C.N.Rys. new station building at Midland, Ont.
- 65112. July 27—Declaring C.N.R. crossing of the highway east of Canora Station, Sask., protected to Board's satisfaction.
- 65113. July 27—Approving location of pipe lines, etc., of McColl-Frontenac Oil Co. Ltd., near C.P.R. tracks at Calgary, Alta.
- 65114. July 31—Declaring C.N.R. crossing of Fifth avenue, first crossing west of St. Pierre Depot, Ville St. Pierre, Que., protected to Board's satisfaction.
- 65115. July 28—Declaring C.N.R. crossing of Durham street, Lindsay, Ont., protected to Board's satisfaction; speed limitation of ten miles per hour to be maintained.
- 65116. July 28—Authorizing C.N.Rys. to construct extension to the public siding along Water street and across Moody and Bernard streets, Yarmouth, N.S.

- 65117. Aug. 1—Approving under Maritime Freight Rates Act tolls published in tariffs filed by C.N.R. under Sec. 3.
- 65118. Aug. 1—Declaring C.P.R. crossing of highway two miles west of Magog Station, P.Q., protected to Board's satisfaction.
- 65119. Aug. 1—Authorizing C.N.R. to reconstruct bridge over the Bear River at mileage 78·0 Graham Subd., Ont.
- 65120. Aug. 1—Authorizing C.N.Rys. to reconstruct bridge over Boyne River at mileage 68·0 Carman Subd., Man.
- 65121. Aug. 1—Approving location of C.P.R. portable shelter at Komarno, Arborg Subd., Man.
- 65122. Aug. 1—Approving location of C.P.R. portable shelter at Gunton, Arborg Subd., Man.
- 65123. Aug. 1—Authorizing C.N.R. to close and divert North and South government Road allowance between SW. Quarter of Sec. 31-38-4, W3M, and SE. Quarter of Sec. 36-38-5 and to construct a new crossing.
- 65124. Aug. 1—Extending time within which to construct and complete a branch line of railway to serve the Stoney Creek Collieries Ltd., mileage 65·67 Wetaskiwin Subd. (C.P.R.)
- 65125. Aug. 2—Declaring C.N.R. crossing of highway 1·35 miles north of Burlington Station, Ont., protected to Board's satisfaction.
- 65126. Aug. 3—Authorizing Municipal District of Grande Prairie, No. 780 to construct, etc., highway crossing over Northern Alberta Railway at mileage 64·7 Grande Prairie Branch.
- 65127. Aug. 1—Approving under Maritime Freight Rates Act tolls published in tariffs filed by Sydney and Louisburg Railway Co. under Sec. 9.
- 65128. Aug. 1—Authorizing C.N.Rys. to reconstruct bridge over the Chateauguay River at mileage 0·3, Beauharnois Subd., P.Q.
- 65129. Aug. 2—Declaring C.N.R. crossing first west of Vassar, Ont., protected to Board's satisfaction.



The Board of Transport Commissioners for Canada

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Application of the Canadian Pacific Railway Company under Sections 37, 39, 51 and 259 of the Railway Act for an Order apportioning the cost of maintaining the subway under its tracks at Avenue Road, in the City of Toronto, in the Province of Ontario.

File 12021.70

Mr. J. Q. MAUNSELL, K.C., and Mr. J. LORNE DAWSON appeared for Canadian Pacific Railway Company;
Mr. F. A. A. CAMPBELL, K.C., for the City of Toronto; and
Mr. IRVING S. FAIRTY, K.C., for the Toronto Transportation Commission.

Heard at Toronto the 7th day of March, 1944.

JUDGMENT

CROSS, Chief Commissioner:

This is an application by Canadian Pacific Railway Company, hereinafter called the Railway Company, under Sections 37, 39, 51 and 259 of the Railway Act for an order apportioning the cost of maintaining the subway under its tracks at Avenue Road, in the City of Toronto, in the Province of Ontario. The City of Toronto is hereinafter referred to as the City.

The said subway is part of a program of grade separation on the North Toronto Branch of the Railway Company initiated by the Board of Railway Commissioners for Canada (now the Board of Transport Commissioners for Canada), in the year 1909, and which was carried out for the protection, safety and convenience of the public.

By Order No. 10817 of the Board of Railway Commissioners for Canada, dated June 7, 1910, The Toronto Railway Company, predecessor of the Toronto Transportation Commission, hereinafter called the Commission, was made a party to the proceedings.

By Order No. 16846, dated June 25, 1912, the Board of Railway Commissioners, save as therein specified, approved a plan of the Railway Company,

dated May 15, 1912, filed with the Board under File No. 12021.70, showing track elevations from Summerhill Avenue, in the City of Toronto, to a point west of Dovercourt Road in the said city, including a subway at Avenue Road.

By Order No. 22855, dated November 12, 1914, the Board ordered that ten per cent of the cost of separation of grades at Avenue Road be borne and paid by the Toronto Railway Company; that twenty per cent of the cost of subways at Davenport Road, Spadina Road and Howland Avenue (not exceeding \$5,000 in any one case) be paid out of The Railway Grade Crossing Fund; that after deducting the above mentioned contributions from the Toronto Railway Company and The Railway Grade Crossing Fund (leaving Yonge Street out of consideration), twenty-five per cent of the remainder of such cost be borne and paid by the City of Toronto; all the above mentioned contributions to be based upon the cost of the work necessary to elevate two Canadian Pacific Railway tracks, with thirteen-foot centres, and the construction of the necessary subways, together with and including the cost of making connections with and alterations to sidings in existence on May 25, 1912; the City's contribution to be for all highways at which grade separation is effected, except Yonge Street, from east of Summerhill Avenue to a point where the grade runs out west of Dovercourt Road; and that the remainder of the cost of said work be borne and paid by the Railway Company.

The said Order No. 22855 did not contain any provision in respect to the cost of maintaining the Avenue Road Subway nor has any order been made allocating or apportioning such cost.

The said subway at Avenue Road was constructed in or about the year 1913.

By the following orders, namely:—Order of the Railway Committee of the Privy Council of Canada, dated November 11, 1902; Order of the Railway Committee of the Privy Council of Canada, dated January 6, 1903; and Order of the Board of Railway Commissioners for Canada, dated March 25, 1904 (Board's File No. 172), the Toronto Railway Company was granted leave to cross the tracks of the Canadian Pacific Railway Company with its tracks on Avenue Road aforesaid, at rail level.

At the time of the construction of said Avenue Road Subway and for several years prior thereto Toronto Railway Company was and had been operating a system of street cars on Avenue Road on both sides of and across the tracks of the Railway Company, at grade level. Following on the completion of the subway in or about the year 1913, the Toronto Railway Company operated its street cars on Avenue Road through the subway.

For a proper understanding of the matter it is desirable to state briefly the connection of the Commission.

The street railways in Toronto which were being operated partly by the City and partly by the Toronto Railway Company, passed in 1921 entirely into the hands of the City which entrusted the working of them to an organization incorporated for the purpose on the 3rd August, 1920, under the name of the Toronto Transportation Commission by an Act of the Ontario Legislature (chap. 144, Statutes of Ontario, 1920). The Commission assumed the management of the street car system on September 1, 1921. Its statutory duties included the construction, control, maintenance, operation and management of new lines of railway in addition to or in extension of existing lines. The system is worked as a service-at-cost undertaking, the tolls and fares being so fixed as to furnish it with a sufficient revenue to render it self sustaining.

The Commission started operation of its street cars through the said Avenue Road Subway on or about September 1, 1921, and has since said date continued such operation.

By Order No. 52909, dated March 20, 1936, the Railway Company was authorized to use and operate over the said subway at Avenue Road.

The Railway Company asks for an order apportioning the cost of maintenance of said Avenue Road Subway between the Railway Company, the City and the Commission.

The City agrees to an order of maintenance, as follows: Seventy-four and one-half per cent by the Railway Company; eighteen per cent by the City; and seven and one-half per cent by the Commission, provided that the order becomes operative as of January 1, 1943, and that the Railway Company maintains its tracks, ties and ballast, the City maintains its pavements and sidewalks, and the Commission its tracks and overhead construction. This division of maintenance is also in accord with the suggestion of the Railway Company. Ten per cent of the cost of construction of the grade separation at Avenue Road was placed upon the Toronto Railway Company by Board's Order 22855, dated November 12, 1914. But, as counsel for the Railway Company points out, the ten per cent contribution of the Toronto Railway Company of the cost of construction was based upon the cost of construction of a two-track subway, whereas the Avenue Road subway was actually constructed to carry five railway tracks, and that the Toronto Railway Company's share of the cost of a two-track subway has been calculated to amount to about seven and one-half per cent of the cost of the subway as actually constructed.

The Commission by its answer states that it is willing in the future, as it has always done in the past, to maintain its tracks and overhead at the location in question but objects to make any other contribution.

The question of the cost of maintenance of the subway up to the present time has not been a matter of major concern to the parties. Very little in the way of maintenance has been found necessary.

As the subway becomes older the cost of maintenance of the structure and of keeping it in good repair is likely to increase. It is, therefore, desirable that the responsibility of the parties for the cost of such maintenance should be fixed and determined.

As earlier pointed out the question has not been previously dealt with. The element of time or delay in making the application can therefore have but little relevance.

The Commission is now and has been since on or about September 1, 1921, operating its street cars through the subway. It is to the advantage of the Commission as well as the other parties that the subway, in the future, be adequately maintained.

On the facts of this case I am satisfied that the Commission is now a party interested or affected within the meaning of Section 33 of the Railway Act, in respect to the Avenue Road Subway. It would not seem necessary to enter upon any extended discussion of this point in view of what is stated and decided in the judgment of the Privy Council in *Canadian Pacific Railway Company vs. Toronto Transportation Commission et al*; *Toronto Transportation Commission vs. Canadian National Railways* (Bloor and Royce Avenue Subways, and Main Street Bridge Cases)—(1930) A.C. 686, 37 C.R.C. 203.

The Toronto Railway Company, the predecessor in interest of the Commission, was required to pay ten per cent of the cost of construction of the subway, as mentioned above. It is, I think, reasonable that the Commission contribute something toward the cost of maintenance of the subway, and I would fix the amount at seven and one-half per cent of such cost. This amount is, in my view, fair and is in accord with the practice of the Board in other cases.

For the reasons stated I think the Board should:—

Apportion the cost of maintenance of the Avenue Road Subway as follows; seven and one-half per cent to be borne and paid by the Toronto Transportation Commission, eighteen per cent by the City of Toronto, and seventy-four and

one-half per cent, the remainder, by the Canadian Pacific Railway Company. Any amounts previously expended toward maintenance of the said subway shall be borne by the party or parties who made the same: Provided that the Toronto Transportation Commission shall maintain its tracks and overhead construction, the City of Toronto shall maintain its pavements and sidewalks, and the Canadian Pacific Railway Company shall maintain its tracks, ties and ballast.

Dated Ottawa, July 26, 1944.

J. A. CROSS.

I concur

HUGH WARDROPE

F. M. MACPHERSON

ORDER No. 65147

In the matter of the application of the Canadian Pacific Railway Company, hereinafter called the "Applicant Company," under Sections 37, 39, 51, and 259 of the Railway Act, for an Order apportioning the cost of maintaining the subway under its tracks at Avenue Road, in the City of Toronto, in the Province of Ontario.

File No. 12021.70

TUESDAY, the 8th day of August, A.D. 1944.

J. A. CROSS, K.C., *Chief Commissioner.*

HUGH WARDROPE, *Asst. Chief Commissioner.*

F. M. MACPHERSON, *Commissioner.*

Upon hearing the application at the sittings of the Board held at Toronto on March 7, 1944, in the presence of Counsel for the Applicant Company, the City of Toronto, and the Toronto Transportation Commission, and what was alleged—

It is ordered:

1. That the cost of maintenance of the said Avenue Road subway be apportioned as follows:—Seven and one-half per cent to be borne and paid by the Toronto Transportation Commission, eighteen per cent by the City of Toronto, and seventy-four and one-half per cent, the remainder, by the Applicant Company.

2. That any amounts previously expended toward maintenance of the said subway shall be borne by the party or parties who made the same: Provided that the Toronto Transportation Commission shall maintain its tracks and overhead construction, the City of Toronto shall maintain its pavements and sidewalks, and the Applicant Company shall maintain its tracks, ties, and ballast.

J. A. CROSS,
Chief Commissioner.

Application of Canadian Pacific Railway Company under Sections 37, 39, 51 and 259 of the Railway Act for an Order apportioning the cost of maintaining the subway under its tracks and the tracks of the Canadian General Electric Company, Limited, at Lansdowne Avenue, in the city of Toronto, in the Province of Ontario.

File No. 32453.8

Mr. J. Q. MAUNSELL, K.C., and Mr. J. LORNE DAWSON appeared for Canadian Pacific Railway Company;

Mr. F. A. A. CAMPBELL, K.C., for the City of Toronto;

Mr. IRVING S. FAIRTY, K.C., for the Toronto Transportation Commission; and

Mr. C. S. MARTIN for Canadian General Electric Company, Limited.

Heard at Toronto the 7th day of MARCH, 1944.

JUDGMENT

CROSS, *Chief Commissioner*:

This is an application by Canadian Pacific Railway Company, hereinafter called the Railway Company, for an Order under Sections 37, 39, 51 and 259 of the Railway Act apportioning the cost of maintaining the subway under its tracks and the tracks of Canadian General Electric Company, Limited, hereinafter called the Electric Company, at Lansdowne Avenue, in the City of Toronto, in the Province of Ontario.

Lansdowne Avenue Subway formed part of the North West Grade Separation and was constructed by the Railway Company in the year 1931 under its tracks and the tracks of the Electric Company, under authority of Orders of the Board of Railway Commissioners for Canada (now the Board of Transport Commissioners for Canada), numbers 35037, dated May 9th, 1924, and 45709, dated November 6th, 1930.

Said Order No. 45709, dated November 6th, 1930, and Order No. 46150, dated January 19th, 1931, provided that after deducting a contribution of forty per cent from the Railway Grade Crossing Fund the balance of the cost of construction of the said subway be borne and paid as follows: Ten per cent by the Toronto Transportation Commission, hereinafter called the Commission; forty-five per cent by the City of Toronto, hereinafter called the City; and forty-five per cent by the Railway Company and the Electric Company in such proportions as they may agree upon. The said orders did not contain any provision in respect to the cost of maintaining the subway nor has any order been made allocating or apportioning such cost.

By Order No. 46909, dated June 24th, 1931, the Commission was authorized, at its own expense to construct and maintain its street railway tracks across the tracks of the Railway Company by means of the said subway then being constructed at Lansdowne Avenue, in the City of Toronto, under the above mentioned Order No. 45709, dated November 6th, 1930.

The Commission started operation of its street cars through the said Lansdowne Avenue subway on or about July 5th, 1931, and has since that time continued such operation.

By Order No. 48054, dated January 29, 1932, the Railway Company was authorized to use and operate over the said subway at Lansdowne Avenue.

The Railway Company asks for an order apportioning the cost of maintaining the said subway between the Commission, the City, and the Railway Company and the Electric Company on the same basis and in the same proportions as that of the cost of construction referred to above.

The City agrees to an order of maintenance as asked for by the Railway Company provided that the order becomes operative as of January 1st, 1943, and that the Railway Company maintains its tracks, ties and ballast, the City maintains its pavements and sidewalks and the Commission its tracks and overhead construction.

The Commission by its answer states that it is willing in the future, as it has always done in the past, to maintain its tracks and overhead at the location in question, but objects to making any other contribution.

The Electric Company consents to an order as applied for by the Railway Company apportioning the cost of maintaining the said subway provided that the order becomes operative as of January 1, 1943, and that the Railway Company maintains its tracks, ties and ballast, the City maintains its pavements and sidewalks and the Commission its tracks and overhead construction.

The question of the cost of maintenance of the subway up to the present time has not been a matter of major concern to the parties. Very little in the way of maintenance has been found necessary. Some small expenditure has been made, presumably by the Railway Company for painting the steel work. Some minor other repairs have been made by the Electric Company. The total expenditure on maintenance of the subway up to the time of the hearing amounted to about \$200.

As the subway becomes older the cost of maintaining the structure and of keeping it in a good state of repair is likely to increase. It is, therefore, desirable that the responsibility of the several parties for the cost of such maintenance should be fixed and determined.

As earlier pointed out the question has not been previously dealt with. The element of time, or delay in making the application can, therefore, have but little relevance.

The grade separation made by the construction of the subway at Lansdowne Avenue was carried out for the protection, safety and convenience of the public. (See Board's Order No. 45709, dated November 6th, 1930).

Mr. Fairty, counsel for the Commission, submits that, as the Commission is a public utility, and under the circumstances present here, it should have the right to use Lansdowne Avenue, on which its tracks are located, and to operate its system of street cars through the subway without being required to contribute toward the cost of maintenance of the subway, and that, consequently, no order for maintenance should be made against the Commission.

In support of this contention we were referred to the judgment of the Hon. C. P. Fullerton, K.C., the then Chief Commissioner of the Board, in *C.N.R. et al vs. Bell Telephone Co. of Canada et al* (Toronto Northwest Grade Separation Cases), 40 C.R.C. 29. I am unable to find that the decisions in that case support the argument made on behalf of the Commission. There was involved in that case the question of the apportionment of the cost of maintenance of, (1) a subway under the tracks of the Brampton and Galt Subdivision of the Canadian National Railways and the Canadian Pacific Railway Company on St. Clair Avenue, in the City of Toronto, and (2) subways under the tracks of the Galt Subdivision and the Toronto, Gray and Bruce Subdivision of the Canadian Pacific Railway Company, and the Brampton Subdivision of the Canadian National Railways at Bloor Street and Royce Avenue; and the Canadian National Railways' Newmarket Subdivision on Bloor Street, in Toronto.

The Toronto Transportation Commission protested against being required to pay any portion of the cost of maintenance.

So far as St. Clair and Bloor Street Subways were concerned the Toronto Transportation Commission was required to pay ten per cent. of the cost of maintenance in each case.

In respect to the Royce Avenue Subway no order was made against the Commission for maintenance. This was because of the fact that it was not using the subway.

There was also involved the question of what contribution, if any, should be made by certain utility companies in connection with the cost of changes in their facilities made necessary by the construction of the works. It was held that with the exception of the Hydro-Electric Power Commission of Ontario, the utility companies would themselves bear the cost of the changes in their facilities. The Toronto Transportation Commission was not, however, one of these utility companies.

Counsel for the Commission further urged that in the event that an order for maintenance is made against the Commission it should be similar to the order made in *C.N.R. vs. Toronto, et al* (Main Street Bridge, Toronto) 39 C.R.C. 330, as the Commission does not contribute in any way to the deterioration of the Lansdowne Avenue Subway. In the *C.N.R. vs. Toronto* case, *supra*, the Commission was only required to pay ten per cent of the cost of ordinary maintenance of the bridge and approaches, such as painting, replacing rivets, etc. But this was because of the special facts and circumstances present in that particular case. The Hon. C. P. Fullerton, K.C., the then Chief Commissioner, who delivered the judgment in the case, said at the end of the judgment, at page 338: "I am basing my finding on this point solely on the evidence given in this case and do not wish to be understood as laying down a rule to be applicable in all cases."

There are no special facts present here which would justify us in departing from the usual practice followed in other similar cases. The Commission is now and has been since July 5, 1931, operating its cars through the subway. It is to the advantage of the Commission as well as the other parties that the subway, in the future, be adequately maintained.

It is, I think, reasonable that the Commission contribute something toward the cost of maintenance of the subway, and I would fix the amount at ten per cent of such cost. This amount is, in my view, fair and is in accord with the practice of the Board in other such cases.

For the reasons stated I think the Board should apportion the cost of maintenance of the Lansdowne Avenue Subway, as follows: ten per cent to be borne and paid by the Toronto Transportation Commission, forty-five per cent by the City of Toronto, and forty-five per cent, the balance, by the Canadian Pacific Railway Company and Canadian General Electric Company, Limited, in such proportion as they may agree upon. Any amounts previously expended toward maintenance of the said subway shall be borne by the parties who made the same: Provided that the Toronto Transportation Commission shall maintain its tracks and overhead construction, the City of Toronto shall maintain its pavements and sidewalks, the Canadian Pacific Railway Company shall maintain its tracks, ties and ballast, and the Canadian General Electric Company, Limited, shall maintain its tracks, ties and ballast.

In the event of any disagreement between the parties herein mentioned as to the details of the apportionment or distribution of cost, or otherwise incidental thereto or arising therefrom, such matters may be referred to the Board on proper notice, for adjustment or further direction.

Dated July 26, 1944.

J. A. CROSS.

I concur

HUGH WARDROPE,

F. M. MACPHERSON.

ORDER No. 65146

In the matter of the application of the Canadian Pacific Railway Company, hereinafter called the "Applicant Company," under Sections 37, 39, 51, and 259 of the Railway Act, for an Order apportioning the cost of maintaining the subway under its tracks and the tracks of the Canadian General Electric Company, Limited, at Lansdowne Avenue, in the City of Toronto, in the Province of Ontario.

File No. 32453.8

TUESDAY, the 8th day of August, A.D. 1944.

J. A. CROSS, K.C., *Chief Commissioner.*HUGH WARDROPE, *Asst. Chief Commissioner.*F. M. MACPHERSON, *Commissioner.*

Upon hearing the application at the sittings of the Board held at Toronto on March 7, 1944, in the presence of Counsel for the Applicant Company, the Toronto Transportation Commission, the City of Toronto, and the Canadian General Electric Company, Limited, and what was alleged—

It is ordered:

1. That the cost of maintenance of the said Lansdowne Avenue subway be apportioned as follows:—Ten per cent to be borne and paid by the Toronto Transportation Commission, forty-five per cent by the City of Toronto, and forty-five per cent, the remainder, by the Applicant Company and the Canadian General Electric Company, Limited, in such proportion as they may agree upon.

2. That any amounts previously expended toward maintenance of the said subway shall be borne by the parties who made the same: Provided that the Toronto Transportation Commission shall maintain its tracks and overhead construction, the City of Toronto shall maintain its pavements and sidewalks, the Applicant Company shall maintain its tracks, ties, and ballast, and the Canadian General Electric Company, Limited, shall maintain its tracks, ties, and ballast.

3. That, in the event of any disagreement between the parties herein mentioned as to the details of the apportionment or distribution of cost, or otherwise, incidental thereto or arising therefrom, such matters may be referred to the Board on proper notice for adjustment or further direction.

J. A. CROSS,
Chief Commissioner.

Application of the Canadian Pacific Railway Company under Sections 37, 39, 51 and 259 of the Railway Act for an Order re-apportioning the cost of constructing the subway under its tracks at Yonge Street, North Toronto, Ontario, so as to include a contribution from the Toronto Transportation Commission, and for an Order apportioning the cost of maintaining the said subway.

File No. 9437.153

Mr. J. Q. MAUNSELL, K.C., and Mr. J. Lorne DAWSON appeared for Canadian Pacific Railway Company;

Mr. F. A. A. CAMPBELL, K.C., for the City of Toronto; and

Mr. Irving S. FAIRTY, K.C., for the Toronto Transportation Commission.

Heard at Toronto the 7th day of March, 1944.

JUDGMENT

CROSS, *Chief Commissioner*:

This is an application by the Canadian Pacific Railway Company, hereinafter called the Railway Company, under Sections 37, 39, 51 and 259 of the Railway Act for an Order reapportioning the cost of construction of the subway under its tracks at Yonge Street, North Toronto, Ontario, so as to include a contribution from the Toronto Transportation Commission, hereinafter called the Commission, and for an Order apportioning the cost of maintaining the said subway.

Pursuant to request by The Board of Railway Commissioners for Canada (now The Board of Transport Commissioners for Canada) in its circular No. 39, dated July 15, 1909, the Railway Company, on October 11, 1909, submitted Yonge Street, in the City of Toronto, hereinafter called the City, as a crossing on which a program of grade separation might start and which crossing at the time was protected by gates. The question of grade separation was thus commenced by and continued to be dealt with on the initiative of the Board.

By Order of the Board No. 10817, dated June 7, 1910, the Toronto Railway Company and the Toronto & York Radial Railway Company were made parties to the proceedings.

By Order of the Board No. 11765, dated September 13, 1910, it was ordered that the plan dated May, 1910, showing the proposed layout across Yonge Street and Avenue Road, in the City of Toronto, filed by the Railway Company and on file with the Board under file No. 9437.153, "be, and it is hereby approved; the question of the cost of making the crossing, the compensation to be paid for land damages, if any, and the question of the Toronto and York Radial Railway Company's terminals, in case the parties cannot agree, to be reserved for further hearing by the Board."

By Order No. 16842, dated June 25, 1912, the Board, save as therein specified, approved a plan of the Railway Company, dated May 15, 1912, on file with the Board under file No. 12021.70, showing track elevation from Summerhill Avenue to Dovercourt Road, which plan included a subway at Yonge Street.

By Order No. 22691, dated October 9, 1914, the Board ordered: That the grade of the highway and railway at the point where the Railway Company crosses Yonge Street, be separated by the construction of a subway through which the highway traffic shall pass underneath the railway in accordance with the plan dated May 15, 1914, on file with the Board under file No. 9437.153. That permission be granted to the City of Toronto to widen Yonge Street

at the said crossing, from 66 feet to 86 feet; and that the said subway have a headroom of 18 feet as indicated on said plan, and that the approaches have grades as indicated therein. The headroom of the said subway which had been previously approved by the Board, was 14 feet and the width 66 feet.

Paragraph 4 of the said Order No. 22691, dated October 9, 1914, further provided that all work in connection with said Yonge Street subway, except that affecting water pipes, sewers, sidewalks, and pavements, be done by the Railway Company; the City to bear and pay the additional cost of the construction of the said subway as provided for in the Order, including additional land damages, over and above what would be the cost of a subway of similar type of construction having a width of 66 feet, a headroom of 14 feet and a grade on the approaches of 5 per cent, except that the Railway Company bear the additional cost of extending the walls of the subway to accommodate grades of two and one half (2½) per cent.

Paragraph 6 of the said Order No. 22691 also further provided that the City do all the work in connection with the maintaining, re-locating or renewing of water pipes and sewers, and construct the pavements and sidewalks made necessary by reason of the construction of the said subway, the division of the cost of the work required to be done under this paragraph to be the same as that provided in paragraph 4 of the Order with regard to the portion of the work to be done by the Railway Company.

By Order No. 24090, dated August 13, 1915, the Board approved detailed plans of the Railway Company for the said subway at Yonge Street, as therein described, dated July 5, 1915, July 16, 1915, and August 2, 1915.

None of the said Orders of the Board contained any provision in respect to the cost of maintaining the said Yonge Street subway nor has any Order been made allocating or apportioning such cost.

The said subway at Yonge Street was completed and put into use in the year 1915 or 1916.

The grade separation made by the construction of the Yonge Street subway was carried out for the protection, safety and convenience of the public.

By Order of the Board, No. 52908, dated March 20th, 1936, the Railway Company was, under Section 251 of the Railway Act, authorized to use and operate the subway at Yonge Street.

The Railway Company asks for an Order re-apportioning the cost of constructing the subway under its tracks at Yonge Street so as to include a contribution from the Toronto Transportation Commission, hereinafter sometimes referred to as the Commission, and for an Order apportioning the cost of maintaining the said subway, and by its application states that,

The Railway Company and the City have agreed upon the following distribution of the cost of maintenance of the said subway (after deducting such contribution as the Board may order to be made by the Commission), viz: the Railway Company seventy-five per cent, the City twenty-five per cent, the Order for maintenance to become operative as of January 1st, 1943, subject to the following provisions:—

(a) "The Railway Company to maintain its tracks, ties and ballast, the City its pavements and sidewalks, and the Toronto Transportation Commission its tracks and overhead construction."

(b) "Should the Toronto Transportation Commission, consequent upon this application be held liable for any part of the construction or maintenance cost in addition to its present obligations, the proportion of the percentages payable by the Railway and the City respectively should be reduced pro rata according to their relative contributions."

The City supports the application of the Railway Company for a re-apportionment of the cost of construction as applied for, and agrees to an Order of maintenance in the terms of the application, as set out above.

The Commission by its answer states that it is willing in the future, as it has always done in the past, to maintain its tracks and overhead at the location in question, but objects to making any other contribution.

At the time of the construction of the said subway no street railway tracks crossed the tracks of the Railway Company at Yonge Street. At that time, the Toronto Railway Company operated a system of street cars south of the tracks of the Railway Company on Yonge Street up to a point about ninety feet from the south side of the tracks of the Railway Company; and the Toronto and York Radial Company, formerly bearing the name Metropolitan Street Railway Company, under a franchise from the Corporation of the County of York operated a system of street cars from a point close to the north side of the tracks of the Railway Company north on Yonge Street.

The franchise of the Metropolitan Street Railway Company (Toronto and York Radial Company) expired on the 25th of June, 1915, and by virtue of an agreement with the City, dated the first day of September, 1891, Toronto Railway Company became entitled to operate a street railway on Yonge Street north of the tracks of the Railway Company to the north City limits. See Chapter 90, Statutes of Ontario, 1892, An Act to incorporate the Toronto Railway Company and to confirm an agreement between the Corporation of the City of Toronto and George W. Kiely, William McKenzie, Henry A. Everett and Chauncey C. Woodworth, and Schedule "A" to the same statute; Re Toronto Railway Company and City of Toronto (1915) 34 Ont. L.R. 456; City of Toronto vs. Toronto Railway Company (1916) 2 A.C. 542, 20 C.R.C. 115.

The Toronto Railway Company extended its line of street railway north on Yonge Street and began to operate its street cars through the said Yonge Street subway in 1916 and continued to operate the same through the subway under the tracks of the Railway Company for some years. No part of the cost of construction of the subway was placed upon the Toronto Railway Company. It was not operating its street railway across the tracks of the Railway Company at the time.

For a proper understanding of the matter it is desirable to state briefly the connection of the Commission with the subway.

The street railways in Toronto which were being operated partly by the City and partly by the Toronto Railway Company, passed in 1921 entirely into the hands of the City which entrusted the working of them to an organization incorporated for the purpose on the 3rd August, 1920, under the name of the Toronto Transportation Commission by an Act of the Ontario Legislature, (Chap. 144, Statutes of Ontario, 1920). The Commission assumed the management of the street car system on September 1st, 1921. Its statutory duties included the construction, control, maintenance, operation and management of new lines of railway in addition to or in extension of existing lines. The system is worked as a service at cost undertaking, the tolls and fares being so fixed as to furnish it with a sufficient revenue to render it self sustaining.

At the hearing of the present application it came to notice that neither the Commission, nor its predecessor in interest, the Toronto Railway Company, had ever obtained leave of the Board, as required by Section 252 of the Railway Act, to cross the tracks of the Railway Company with their street car tracks at Yonge Street by means of the subway or otherwise. The Board on April 28, 1944, wrote Mr. Fairty, Counsel for the Commission, expressing the view that before the Railway Company's application was disposed of, the Commission should make application to the Board, under Section 252 of the Act, for

leave to continue to operate its street cars across the lines of the Railway Company by means of and through the subway in question. A copy of the letter was at the same time sent by the Secretary of the Board to Counsel for the Railway Company and the City.

On June 21, 1944, the Commission, by its Counsel, filed with the Board an application under Section 252 of the Railway Act for leave to continue to operate its street cars across the line of the Railway Company by means of and through Yonge Street subway, in the same manner as it has done since 1921 and as its predecessor in title, Toronto Railway Company, did before it.

The Railway Company by its answer to the said application of the Commission, dated July 13, 1944, consents to an Order of the Board "authorizing the continued operation of the Toronto Transportation Commission through Yonge Street subway subject to the Commission paying a proper proportion of the cost of the construction and maintenance of this subway in accordance with the application of this Company to the Board, dated July 28, 1943, (Board's File No. 9437.153), which application was heard by the Board at Toronto on March 7, 1944, when judgment was reserved."

The City by its answer to the said application of the Commission, dated August 4, 1944, consents to an Order of the Board "authorizing the continued operation of the Toronto Transportation Commission through the Yonge Street subway without prejudice to the position taken on behalf of The Corporation of the City of Toronto on the application of the Canadian Pacific Railway to have the Toronto Transportation Commission pay a proportion of the cost of construction and maintenance of the subway which application was heard by the Board at Toronto on March 7, 1944."

Under the facts and circumstances present here I think that the application of the Commission should be allowed, and the situation regularized.

In respect to terms, the only substantial question requiring consideration is what portion, if any, of the cost of construction and maintenance of the subways, or either of them, should be imposed on the Commission as a condition of the granting to it of the leave applied for. This question, in my view, is sufficiently raised in the main application of the Railway Company.

On the facts of this case I am satisfied that the Commission is now a party interested or affected within the meaning of Section 33 of the Railway Act, in respect to Yonge Street subway and the Commission is undoubtedly an entity against which the Board could make an Order for contribution. It would not seem necessary to enter upon an extended discussion of this point in view of what is stated and decided in the judgment of the Privy Council, in *Canadian Pacific Railway Company vs. Toronto Transportation Commission, et al.*; *Toronto Transportation Commission vs. Canadian National Railways* (Bloor and Royce Avenue Subways, and Main Street Bridge Cases)—(1930) A.C. 686, 37 C.R.C. 203.

The Railway Company had knowledge in the year 1916 that Toronto Railway Company, the predecessor in title of the Commission, was operating its street cars through Yonge Street subway and was using this means of crossing the lines of the Railway Company. I think that it must also be taken that the Railway Company had like knowledge of the continuation of such operation by both the Toronto Railway Company and the Commission.

The Commission bases its objection to making any contribution to the cost of construction or maintenance of the subway, among other things, on the ground that because of undue delay in making this application the Railway Company is precluded from any right to the Order applied for.

The subway was completed and put into use in 1915 or 1916, and the present application was made on July 30, 1943. The Toronto Railway Company first operated its street cars through the Yonge Street subway in 1916, and its successor in interest, the Commission in 1921.

There was a delay of twenty-seven years in making the application to place part of the cost upon the Commission, or the Toronto Railway Company. No sufficient reason has been shown for this long delay. There is no suggestion that the Railway Company was not aware of its rights or that it was not in a position to launch the application. No statute of limitation applies to a matter of this kind, but in the circumstances here present it would not accord with what, in my opinion, is reasonable and proper, to reapportion the cost of a structure which was completed twenty-seven years before the question of re-apportionment was raised. The Railway Company, in my view, has not prosecuted its claim without undue delay.

I would refuse the claim of the Railway Company for an Order re-apportioning the cost of the construction of the subway at Yonge Street.

There remains for consideration the question of apportioning the cost of maintaining the subway. The facts in respect to the question of apportionment of maintenance are substantially different from those relating to the division of cost of construction of the subway. As earlier pointed out, the question has not been previously dealt with. The element of time or delay in making the application therefore, can have but comparatively little relevance.

The cost of maintenance of the subway up to the present time has not been a matter of major concern to any of the parties. Very little in the way of maintenance has been found necessary.

As the subway becomes older the cost of maintenance of the structure and of keeping it in repair is likely to increase. It is, therefore, desirable that the responsibility of the parties for the cost of such maintenance be fixed and determined.

The Commission is now and has been since on or about September 1, 1921, operating its street cars through the subway. It is to the advantage of the Commission as well as the other parties that the subway, in the future, be adequately maintained.

It is, I think, reasonable that the Commission be required to contribute something toward the cost of maintenance of the subway, and I would fix the amount at ten per cent of such cost. The amount is, in my view, fair and reasonable and is in accord with the practice of the Board in other such cases.

For the reasons stated I think the Board should:—

(1) Approve the construction and maintenance by the Toronto Transportation Commission of its street car tracks across the tracks of Canadian Pacific Railway Company by means of and through the subway already constructed at Yonge Street, in the City of Toronto, in the Province of Ontario, under Orders of the Board Nos. 22691, dated October 9, 1914, 23596, dated April 22, 1915, and 24090, dated August 13, 1915, as shown on the plans referred to in such Orders, on file with the Board under File No. 9437.153;

(2) Dismiss that portion of the application of Canadian Pacific Railway Company which asks for an Order reapportioning the cost of construction of the said Yonge Street subway, in the City of Toronto, so as to include a contribution from the Toronto Transportation Commission;

(3) Apportion the cost of maintenance of said Yonge Street subway, as follows: ten per cent to be borne and paid by the Toronto Transportation Commission, twenty-two and one half per cent by the City of Toronto, and the remainder sixty-seven and one-half per cent by Canadian Pacific Railway Company. Any amounts previously expended toward maintenance of the subway shall be borne by the party or parties who made the same: Provided

that the Toronto Transportation Commission shall maintain its tracks and overhead structures, the City of Toronto shall maintain its pavements and sidewalks, and the Canadian Pacific Railway shall maintain its tracks, ties and ballast.

Dated, Ottawa, August 7, 1944.

J. A. CROSS.

I concur

Hugh WARDROPE.

F. M. MACPHERSON.

ORDER No. 65145

In the matter of the application of the Canadian Pacific Railway Company, hereinafter called the "Applicant Company," under Sections 37, 39, 51, and 259 of the Railway Act, for an Order reappportioning the cost of constructing the subway under its tracks at Yonge Street, North Toronto, Ontario, so as to include a contribution from the Toronto Transportation Commission; and for an Order apportioning the cost of maintaining the said subway.

File No. 9437.153

TUESDAY, the 8th day of August, A.D. 1944.

J. A. CROSS, K.C., *Chief Commissioner.*

HUGH WARDROPE, *Assistant Chief Commissioner.*

F. M. MACPHERSON, *Commissioner.*

Upon hearing the application at the sittings of the Board held at Toronto on March 7, 1944, in the presence of Counsel for the Applicant Company, the City of Toronto, and the Toronto Transportation Commission, and what was alleged—

It is ordered:

1. That the construction and maintenance by the Toronto Transportation Commission of its street car tracks across the tracks of the Applicant Company by means of and through the subway already constructed at Yonge Street, in the City of Toronto, in the Province of Ontario, under Orders of the Board Nos. 22691, dated October 9, 1914, 23596, dated April 22, 1915, and 24090, dated August 13, 1915, as shown on the plans referred to in such Orders, on file with the Board under file No. 9437.153, be, and they are hereby, approved.

2. That the portion of the application of the Applicant Company which asks for an Order reappportioning the cost of construction of the said Yonge Street subway, in the City of Toronto, so as to include a contribution from the Toronto Transportation Commission be, and it is hereby, dismissed.

3. That the cost of maintenance of the said Yonge Street subway be apportioned as follows: Ten per cent to be borne and paid by the Toronto Transportation Commission, twenty-two and one-half per cent by the City of Toronto, and the remainder, sixty-seven and one-half per cent, by the Applicant Company.

4. That any amounts previously expended toward maintenance of the said subway shall be borne by the party or parties who made the same: PROVIDED that the Toronto Transportation Commission shall maintain its tracks and overhead structures, the City of Toronto shall maintain its pavements and sidewalks, and the Applicant Company shall maintain its tracks, ties and ballast.

J. A. CROSS,
Chief Commissioner.

Application of the Canadian Pacific Railway Company under Sections 37, 39, 51 and 259 of the Railway Act for an Order reapportioning the cost of constructing the subways under its tracks at Bathurst Street and Dovercourt Road, in the City of Toronto, in the Province of Ontario, so as to include a contribution from the Toronto Transportation Commission, and for an Order apportioning the cost of maintaining the said subways.

Files 22162.1 and 9437.724

Mr. J. Q. MAUNSELL, K.C., and Mr. J. LORNE DAWSON appeared for Canadian Pacific Railway Company;
Mr. F. A. A. CAMPBELL, K. C., for the City of Toronto; and
Mr. IRVING S. FAIRTY, K.C., for the Toronto Transportation Commission.

Heard at Toronto the 7th day of March, 1944.

JUDGMENT

CROSS, *Chief Commissioner.*

This is an application by Canadian Pacific Railway Company, hereinafter called the Railway Company, under Sections 37, 39, 51 and 259 of the Railway Act for an Order reapportioning the cost of constructing the subways under its tracks at Bathurst Street and Dovercourt Road, in the City of Toronto, hereinafter called the City, so as to include a contribution from the Toronto Transportation Commission, hereinafter called the Commission, and for an Order apportioning the cost of maintaining the said subways.

The said subways are part of a program of grade separation on the North Toronto Branch of the Railway Company, initiated by the Board of Railway Commissioners for Canada (now the Board of Transport Commissioners for Canada), in the year 1909 which was carried out for the protection, safety and convenience of the public.

By Order of the Board of Railway Commissioners for Canada, No. 10817, dated June 7, 1910, The Toronto Street Railway Company, predecessor in interest of the Commission, was made a party to the proceedings.

By Order No. 16842, dated June 25, 1912, the Board of Railway Commissioners for Canada approved a plan of the Railway Company, dated May 15, 1912, filed with the Board under File No. 12021.70, showing track elevation from Summerhill Avenue in the City of Toronto to a point west of Dovercourt Road, including subways at Bathurst Street and Dovercourt Road.

By Order No. 22502, dated September 3, 1914, the Board approved plan, profile and book of reference, dated July 25, 1914, on file with the Board under File No. 9437.724, showing subway proposed to be constructed at Dovercourt Road.

By Order No. 22855, dated November 12, 1914, the Board ordered that ten per cent of the cost of separation of grades at Avenue Road be borne and paid by the Toronto Railway Company; that twenty per cent of the cost of subways at Davenport Road, Spadina Road and Howland Avenue (not exceeding \$5,000 in any one case) be paid out of The Railway Grade Crossing Fund; that, after deducting the above mentioned contributions from the Toronto Railway Company and The Railway Grade Crossing Fund (leaving Yonge Street out of consideration), twenty-five per cent of the remainder of such cost be borne and paid by the City of Toronto; the said contributions to be based upon the cost of the work necessary to elevate two Canadian Pacific Railway tracks, with thirteen foot centres, and the construction of the necessary subways, together with and including the cost of making connections with and alterations to sidings in existence on May 26, 1912, in order to give proper access thereto; the City's contribution to be for all highways at which grade separation is effected, except Yonge Street, from east of Summerhill Avenue to a point where

the grade runs out west of Dovercourt Road; and that the remainder of the cost of said work be borne and paid by the Railway Company. The subways covered by said Order No. 22855, dated November 12, 1914, included subways at Bathurst Street, and Dovercourt Road.

The said subways at Bathurst Street and Dovercourt Road were constructed in or about the year 1914.

By Order No. 52905, dated March 20, 1936, the Board authorized the Railway Company to use and operate the subway at Bathurst Street and by Order No. 52906 bearing the same date the Board authorized the Railway Company to use and operate the subway at Dovercourt Road.

At the time of the construction of Bathurst Street subway no street cars were operated across the tracks of the steam Railway Company, nor had any street car tracks been laid across the tracks of the Railway Company at this point. The Toronto Railway Company was, however, operating a system of street cars on tracks on Bathurst Street south of the Railway Company's right of way and to a point close to such right of way. On Bathurst Street just north of the Railway Company's right of way were also located street car tracks of the Toronto Suburban Railway Company on which it operated a system of street cars.

At the time of the construction of the Dovercourt Road subway no street cars were operated across the tracks of the steam Railway Company, nor had any street car tracks been laid across the tracks of the Railway Company at this point. The Toronto Railway Company, however, operated a system of street cars on Dovercourt Road south of the Railway Company's right of way but their tracks ended in a stub a short distance south of the tracks of the Railway Company.

For a proper understanding of the matter it is desirable to state briefly the connection of the Commission with the subways.

The street railways in Toronto which were being operated partly by the City and partly by the Toronto Railway Company, passed in 1921 entirely into the hands of the City which entrusted the working of them to an organization incorporated for the purpose on the 3rd August, 1920, under the name of the Toronto Transportation Commission by an Act of the Ontario Legislature, (chap. 144, Statutes of Ontario, 1920). The Commission assumed the management of the street car system on September 1st, 1921. Its statutory duties included the construction, control, maintenance, operation and management of new lines of railway in addition to or in extension of existing lines. The system is worked as a service-at-cost undertaking, the tolls and fares being so fixed as to furnish it with a sufficient revenue to render it self sustaining.

The Railway Company, the applicant, by paragraph 8 of its application states:—

"8. Canadian Pacific Railway Company and the City of Toronto have agreed upon the following distribution of the cost of maintenance of the said subways (after deducting such contributions as the Board may order to be made by The Toronto Transportation Commission) viz:—

Canadian Pacific Railway Company	78%
City of Toronto	22%

the order for maintenance to become operative as of January 1, 1943, subject to the following provisions:—

- A. The Railway Company to maintain its tracks, ties and ballast, the City its pavements and sidewalks, and The Toronto Transportation Commission its tracks and overhead construction.
- B. Should The Toronto Transportation Commission, consequent upon this application, be held liable for any part of construction or maintenance costs, in addition to its present obligations, the propor-

tions of the percentages payable by the Railway and the City respectively should be reduced pro rata according to their relative contributions."

and asks for an order accordingly.

The City agrees to an order for maintenance in accordance with the terms of the application set out above, and supports the application of the Railway Company for a contribution from the Commission toward the cost of construction of the two subways, on the condition that should the Commission consequent upon this application be held liable for any part of construction or maintenance cost in addition to its present obligations, the order of maintenance shall contain a clause that the proportions of the percentages payable by the Railway Company and the City respectively should be reduced pro rata according to their relative contributions.

The Commission by its answer states that it is willing in the future, as it has always done in the past, to maintain its tracks and overhead at the locations in question, but objects to making any other contribution.

At the time of making the said Order No. 22855, dated September 3, 1914, apportioning the cost of constructing the subways at Bathurst Street and Dovercourt Road and of other works involved in the North Toronto Grade Separation project the tracks of the Railway were not intersected by any street railway at Bathurst Street or Dovercourt Road. But the Toronto Railway Company operated a system of street cars on both Bathurst Street and Dovercourt Road just south of the Railway Company's right of way, and on Bathurst Street just north of said right of way the Toronto Suburban Railway Company operated street cars.

It would seem probable that the Toronto Railway Company and the Toronto Suburban Railway Company, at the time of making said apportionment of costs Order No. 22855, were not considered to be interested or affected within the meaning of Section 33 of the Railway Act, as no order as to costs was made against either of them. The Commission certainly was not interested or affected at that time. It did not come into being until its incorporation in 1920.

In the extension and improvement of its system of street cars in the City of Toronto, the Commission extended its lines through Bathurst Street subway, started operating its cars through the subway on September 1, 1921, and has since that time continued such operation. And in respect to Dovercourt Road, the Commission, for like purpose extended its lines through Dovercourt Road subway, started operating its cars through the subway on September 5, 1931, and has since that date continued such operation.

The questions for determination are whether the Commission should now be required to contribute toward the cost of construction of the subways, or either of them, and if so to what extent; and how the cost of maintaining the said subways should be apportioned.

On the facts of this case I am satisfied that the Commission is now a party interested or affected within the meaning of Section 33 of The Railway Act, in respect to both the Bathurst Street and Dovercourt Road subways and that the Commission is undoubtedly an entity against which the Board could make an order for contribution. It would not seem necessary to enter upon an extended discussion of this point in view of what is stated and decided in the judgment of the Privy Council, in *Canadian Pacific Railway Company vs. Toronto Transportation Commission et al*; *Toronto Transportation Commission vs. Canadian National Railways* (Bloor and Royce Avenue Subways, and Main Street Bridge Cases)—(1930) A.C. 686, 37 C.R.C. 203.

It would seem clear that the Railway Company had knowledge of the commencement and continuance of the operation by the Commission of street cars through both Bathurst Street and Dovercourt Road subways.

The Commission bases its objection to making any contribution to the cost of construction or maintenance of the subways, among other things, on the ground that because of undue delay in making this application the Railway Company is precluded from any right to the order applied for.

At the hearing of the present application of the Railway Company it came to notice that neither the Commission nor its predecessors in interest, the Toronto Railway Company and the Toronto Suburban Railway Company, had ever obtained leave of the Board, as required by Section 252 of The Railway Act, to cross the tracks of the Railway Company with their street car tracks at Bathurst Street or Dovercourt Road by means of the subways or otherwise. The Board, on April 28, 1944, wrote Mr. Fairty, counsel for the Commission, expressing the view that before the Railway Company's application was disposed of, the Commission should make application to the Board, under Section 252 of the Act, for leave to continue to operate its street cars across the lines of the Railway Company by means of and through the subways in question. A copy of the letter was at the same time sent by the Secretary of the Board to counsel for the Railway Company and the City.

On June 21, 1944, the Commission, by its counsel, filed with the Board an application under Section 252 of the Railway Act for leave to continue the operation of its street cars across the lines of the Railway Company by means of and through the Bathurst Street subway, Toronto, and the Dovercourt Road subway, Toronto, such subways being part of the North Toronto Grade Separation.

The Railway Company by its answer to the said application of the Commission, dated July 13, 1944, consents to an Order of the Board "authorizing the continued operation of the Toronto Transportation Commission through the Bathurst Street and Dovercourt Road subways subject to that Commission paying a proper proportion of the cost of construction and maintenance of these subways in accordance with the application of this Company to the Board, dated July 28, 1943, (Board's files Nos. 22162.1 and 9437.724), which applications were heard by the Board at Toronto on March 7, 1944, when judgment was reserved".

The City by its answer to the said application of the Commission, dated August 4, 1944, consents to an Order of the Board "authorizing the continued operation of the Toronto Transportation Commission through the Bathurst Street and Dovercourt Road subways without prejudice to the position taken on behalf of The Corporation of the City of Toronto, on the application of the Canadian Pacific Railway to have the Toronto Transportation Commission pay a proportion of the cost of construction and maintenance of the subways, which applications were heard by the Board at Toronto on March 7, 1944".

Under the facts and circumstances present here I think that the application of the Commission should be allowed, and the situation regularized.

In respect to terms, the only substantial question requiring consideration is what portion, if any, of the cost of construction and maintenance of the subways, or either of them, should be imposed on the Commission as a condition of the granting to it of the leave applied for. This question, in my view, is sufficiently raised in the main application of the Railway Company.

The subways were built in 1914 and the present application of the Railway Company was made on July 30, 1943. The Commission first operated through the Bathurst Street subway in 1921, and through the Dovercourt Road subway in 1931.

In the Bathurst Street case, there was a delay of twenty-two years in making the application to place part of the cost upon the Commission; in the Dovercourt Road case, there was a delay of twelve years. No sufficient reason has been shown for this long delay. There is no suggestion that the Railway Company was not aware of its rights or that it was not in a position to launch its application. No statute of limitation applies to a matter of this kind but, in the circumstances here present, it would not accord with what, in my opinion,

is reasonable and proper, to reapportion the cost of structures which were completed 29 years before the question of reapportionment was raised.

I would refuse the application of the Railway Company for an Order reapportioning the cost of the construction of the subways under its tracks at Bathurst Street and Dovercourt Road.

There remains for consideration the question of apportioning the cost of maintaining the subways. On this question the two subways may be considered together. The facts in respect to the question of apportionment of maintenance are substantially different from those relating to the division of the cost of construction of the subway. As earlier pointed out, the question has not been previously dealt with. The element of time or delay in making the application, therefore, can have but comparatively little relevance.

The cost of maintenance of the subways up to the present time has not been a matter of major concern to any of the parties. Very little in the way of maintenance has been found necessary.

As the subways become older the cost of maintenance of the structures and of keeping them in repair is likely to increase. It is, therefore, desirable that the responsibility of the parties for the cost of such maintenance be fixed and determined.

The Commission is now operating its street cars through both subways, and has operated its street cars through Bathurst Street subway since September 1, 1921, and through Dovercourt Road subway since September 5, 1931. It is to the advantage of the Commission as well as the other parties that each of the subways, in the future, be adequately maintained.

It is, I think, reasonable that the Commission be required to contribute something toward the cost of maintenance of the subways, and I would fix the amount as ten per cent of such cost in each case. This amount is, in my view, fair and reasonable and is in accord with the practice of the Board in other such cases.

For the reasons stated I think the Board should:—

(1) Approve the construction and maintenance by the Toronto Transportation Commission of its street car tracks across the tracks of the Canadian Pacific Railway Company by means of and through the subways already constructed at Bathurst Street, and Dovercourt Road, in the City of Toronto, in the Province of Ontario, under Orders of the Board Nos. 16842, dated June 25, 1912, and 22502, dated September 3, 1914, as shown on the plans referred to in said orders, on file with the Board under Files Nos. 12021.70 and 9437.724;

(2) Dismiss that portion of the application of the Canadian Pacific Railway Company which asks for an Order reapportioning the cost of constructing the said subways under its tracks at Bathurst Street and Dovercourt Road, in the City of Toronto, in the Province of Ontario, so as to include a contribution from the Toronto Transportation Commission;

(3) Apportion the cost of maintenance of the Bathurst Street subway and the Dovercourt Road subway as follows: ten per cent to be borne and paid by Toronto Transportation Commission, nineteen and eight-tenths per cent by the City of Toronto, and the remainder, seventy and two-tenths per cent, by the Canadian Pacific Railway Company. Any amounts previously expended toward maintenance of the subways or either of them shall be borne by the party or parties who made the same: Provided that the Toronto Transportation Commission shall maintain its tracks and overhead structures, the City of Toronto shall maintain its pavements and sidewalks, and the Canadian Pacific Railway Company shall maintain its tracks, ties and ballast.

Dated at Ottawa, August 7, 1944.

J. A. CROSS.

I concur

Hugh WARDROPE.

F. M. MACPHERSON.

ORDER No. 65144

In the matter of the application of the Canadian Pacific Railway Company, hereinafter called the "Applicant Company," under Sections 37, 39, 51, and 259 of the Railway Act, for an Order reappportioning the cost of constructing the subways under its tracks at Bathurst Street and Dovercourt Road, in the City of Toronto, in the Province of Ontario, so as to include a contribution from the Toronto Transportation Commission; and for an Order apportioning the cost of maintaining the said subways.

Files Nos. 22162.1 and 9437.724

TUESDAY, the 8th day of August, A.D. 1944.

J. A. CROSS, K.C., *Chief Commissioner.*

HUGH WARDROPE, *Asst. Chief Commissioner.*

F. M. MACPHERSON, *Commissioner.*

Upon hearing the application at the sittings of the Board held in Toronto on March 7, 1944, in the presence of Counsel for the Applicant Company, the City of Toronto, and the Toronto Transportation Commission, and what was alleged—

It is ordered:

1. That the construction and maintenance by the Toronto Transportation Commission of its street car tracks across the tracks of the Applicant Company by means of and through the subways already constructed at Bathurst Street and Dovercourt Road, in the City of Toronto, in the Province of Ontario, under Orders Nos. 16842, dated June 25, 1912, and 22502, dated September 3, 1914, as shown on the plans referred to in the said Orders, on file with the Board under files Nos. 22162.1 and 9437.724, be, and they are hereby, approved.

2. That the portion of the application of the Applicant Company which asks for an order reappportioning the cost of constructing the said subways under its tracks at Bathurst Street and Dovercourt Road, in the City of Toronto, in the Province of Ontario, so as to include a contribution from the Toronto Transportation Commission be, and it is hereby, dismissed.

3. That the cost of maintenance of the Bathurst Street subway and the Dovercourt Road subway be apportioned as follows:—Ten per cent to be borne and paid by the Toronto Transportation Commission, nineteen and eight-tenths per cent by the City of Toronto, and the remainder, seventy and two-tenths per cent, by the Applicant Company.

4. That any amounts previously expended toward maintenance of the said subways, or either of them, shall be borne by the party or parties who made the same: Provided that the Toronto Transportation Commission shall maintain its tracks and overhead structures, the City of Toronto shall maintain its pavements and sidewalks, and the Applicant Company shall maintain its tracks, ties, and ballast.

J. A. CROSS,
Chief Commissioner.

ORDER No. 65135

In the matter of the application of Mackenzie Air Service, Limited, hereinafter called the "Applicant", under Section 13 of The Transport Act, 1938, for a licence to transport by air passengers and/or goods between Edmonton, Lac la Biche, McMurray, Embarras, Chipewyan, Fitzgerald, in the Province of Alberta; Fort Smith, Resolution, Taltson River, Outpost Island, Yellowknife, Gordon Lake, Rae, Cameron Bay (Port Radium) and/or Labine Point, Coppermine, in the Northwest Territories.

File No. 42007.14.1

FRIDAY, the 4th day of August, A.D. 1944.

J. A. CROSS, K.C., *Chief Commissioner.*HUGH WARDROPE, *Assistant Chief Commissioner.*J. A. STONEMAN, *Commissioner.*F. M. MacPHERSON, *Commissioner.*

Whereas, in pursuance of Order No. 63880, dated August 16, 1943, a licence was issued to the Applicant in renewal of Licence Number C.T.C. (A.T.) 44 for the period of one year commencing on August 30, 1943—

Therefore it is ordered: That a licence be issued to the Applicant for the period of one year commencing on August 30, 1944, in renewal of the said Licence Number C.T.C. (A.T.) 44.

J. A. CROSS,
Chief Commissioner.

ORDER No. 65136

In the matter of the application of L. E. Kipp, Agent, Transcontinental Freight Bureau, hereinafter called the "Applicant", for authority to publish rate on bicycles in transcontinental tariffs issued jointly with other agents on less than statutory notice.

File No. 27612.296

MONDAY, the 7th day of August, A.D. 1944.

J. A. CROSS, K.C., *Chief Commissioner.*HUGH WARDROPE, *Assistant Chief Commissioner.*

Whereas the Interstate Commerce Commission, under Investigation and Suspension Docket No. 5250, suspended the application of certain rates on bicycles filed to become effective August 15, 1943, in the following schedules:—

Agent Kipp's.....	C.T.C. 780 and 792
" Doe's.....	C.T.C. 402 and 418
" Curlett's.....	C.T.C. A508 and A527
" Jones'.....	C.T.C. 1834 and 1874

And whereas the aforesaid suspension has been vacated by the Interstate Commerce Commission and such schedules are permitted to become effective August 14, 1944, and the Applicant desires to publish the same on a uniform date—

It is ordered: That the Applicant be, and he is hereby, granted permission to file schedules to become effective August 14, 1944, publishing the rates formerly held in suspension.

J. A. CROSS,
Chief Commissioner.

ORDER No. 65154

In the matter of the application of Wings Limited, hereinafter called the "Applicant", under Section 13 of The Transport Act, 1938, for a licence to transport passengers and/or goods by air between Winnipeg and/or Lac du Bonnet, Bird River, Maskwa, Diana, Wadhope, Beresford Lake, Halfway Lake, Wallace Lake, and Bisset, in the Province of Manitoba.

File No. 42007.19.7

THURSDAY, the 10th day of August, A.D. 1944.

J. A. CROSS, K.C., *Chief Commissioner.*

HUGH WARDROPE, *Assistant Chief Commissioner.*

J. A. STONEMAN, *Commissioner.*

Whereas, in pursuance of Order No. 63919, dated August 25, 1943, the Applicant was granted a licence in renewal of Licence Number C.T.C. (A.T.) 46 for the period of one year from September 7, 1943—

Therefore it is ordered: That a licence be issued to the Applicant for the period of one year commencing on September 7, 1944, in renewal of the said Licence Number C.T.C. (A.T.) 46.

J. A. CROSS,
Chief Commissioner.

ORDER No. 65157

In the matter of the application of Wings Limited, hereinafter called the "Applicant," under Section 13 of The Transport Act, 1938, for a licence to transport passengers and/or goods by air between Winnipeg and/or Lac du Bonnet, Beresford Lake, in the Province of Manitoba, and Cole, Golden Arm, Madsen, McKenzie Island, Red Lake, in the Province of Ontario.

File No. 42007.19.5

THURSDAY, the 10th day of August, A.D. 1944.

J. A. CROSS, K.C., *Chief Commissioner.*

HUGH WARDROPE, *Asst. Chief Commissioner.*

J. A. STONEMAN, *Commissioner.*

F. M. MACPHERSON, *Commissioner.*

Whereas, in pursuance of Order No. 63918, dated August 25, 1943, the Applicant was granted a licence in renewal of Licence Number C.T.C. (A.T.) 45 for the period of one year commencing on September 7, 1943.

Therefore it is ordered: That a licence be issued to the Applicant for the period of one year commencing on September 7, 1944, in renewal of the said Licence Number C.T.C. (A.T.) 45.

J. A. CROSS,
Chief Commissioner.

SUMMARY OF ORDERS ISSUED BY THE BOARD

- 65130 Aug. 1—Approving Supplement No. 2 to Traffic Agreement between the Bell Telephone Co. of Canada and the Madawaska Telephone Association, Ltd.
- 65131 Aug. 1—Approving Service Station Application, between the Bell Telephone Co. of Canada and the Madawaska Telephone Association, Ltd.
- 65132 Aug. 5—Amending Order No. 64041 authorizing the C.N.R. to use and operate the swing span of the Lachine Canal bridge between Pointe St. Charles and St. Henri, Montreal, P.Q.
- 65133 Aug. 4—Authorizing C.N.Rys. to remove passenger shelter at Clearwater, N.B.
- 65134 Aug. 4—Authorizing C.N.Rys. to reconstruct highway undercrossing at mile 94.3 Three Hills Subd., Alta.
- 65135 Aug. 4—Authorizing issuing of Licence to Mackenzie Air Service, Limited, in renewal of Licence No. C.T.C. (A.T.) 44.
- 65136 Aug. 7—Authorizing Transcontinental Freight Bureau to file schedules publishing the rates on bicycles formerly held in suspension.
- 65137 Aug. 5—Authorizing C.N.R. to construct three additional tracks to serve Longue Pointe Ordnance Depot across Haig Avenue, Montreal, Que.
- 65138 Aug. 8—Authorizing C.N.Rys. to construct sidings across Dollard and Dion Streets, St. Laurent, P.Q.
- 65139 Aug. 5—Declaring C.P.R. crossing of Cote St. Elzear Road just east of Le Cap, Que. protected to Board's satisfaction.
- 65140 Aug. 7—Authorizing C.P.R. to construct branch line of railway to serve North Star Oil Ltd. at St. Boniface, Man.
- 65141 Aug. 7—Approving location of C.N.Rys. new station at Mattice, Ont.
- 65142 Aug. 7—Declaring C.P.R. crossing second north of station at Niverville, Man. protected to Board's satisfaction.
- 65143 Aug. 7—Declaring C.N.R. crossing of Silver Creek Road one-half mile south of Guelph Junction, Ont., protected to Board's satisfaction.
- 65144 Aug. 8—Re-apportioning cost of maintaining subways under C.P.R. tracks at Bathurst Street and Dovercourt Road, Toronto, Ont.
- 65145 Aug. 8—Re-apportioning cost of maintaining subway under C.P.R. tracks at Yonge St., North Toronto, Ont.
- 65146 Aug. 8—Apportioning cost of maintaining subway under C.P.R. tracks and the tracks of the Canadian General Electric Co., Ltd., at Lansdowne Ave., Toronto, Ont.
- 65147 Aug. 8—Apportioning cost of maintaining subway under C.P.R. tracks at Avenue Road, Toronto, Ont.
- 65148 Aug. 8—Approving location of new station of C.N.Rys. at Strathcona, Ont.
- 65149 Aug. 7—Approving changes to interlocking plant at crossing of the Hamilton Street Railway with the C.N.Rys. at Kenilworth Avenue, Hamilton, Ont.
- 65150 Aug. 8—Extending time within which to install two flashing light signals and one pedestrian bell at mileage 52.89 St. Thomas and Walkerville Subd., Coatsworth, Ont. (Pere Marquette Ry.).
- 65151 Aug. 8—Authorizing C.N.Rys. to use and operate bridges on their Three Hills Subd., Alberta District at certain mileages.
- 65152 Aug. 8—Authorizing C.N.Rys. to construct spur track across provincial highway at Oyama, B.C.
- 65153 Aug. 8—Authorizing C.N.R. to construct spur track across Thorne Avenue, Saint John, N.B.
- 65154 Aug. 10—Authorizing issuing of Licence to Wings Limited, in renewal of Licence No. C.T.C. (A.T.) 46.
- 65155 Aug. 8—Authorizing C.P.R. and C.N.R. to operate their engines, cars and trains over three sidings and two crossovers of The Toronto Harbour Commissioners serving Victory Mills Limited, Fleet Street, Toronto, Ont.
- 65156 Aug. 8—Approving materials and method of construction of pipe lines under tracks of C.N.Rys. at mile 112.1 Skeena Subd., B.C.
- 65157 Aug. 10—Authorizing issuing of Licence to Wings Limited, in renewal of Licence No. C.T.C. (A.T.) 45.
- 65158 Aug. 15—Authorizing Grand River Railway Co. to install four flashing light signals at crossing of Dundas and Beverly Streets, Galt, Ont.
- 65159 Aug. 14—Declaring C.N.R. crossing of Ottawa Street, Richmond, Ont., protected to Board's satisfaction.
- 65160 Aug. 8—Authorizing Lake Erie and Northern Railway Co. to install flashing light signals at crossing of Bruce St. at Galt, Ont.
- 65161 Aug. 14—Authorizing C.N.R. to construct extension to passing track across Monture Street, Cayuga, Ont.
- 65162 Aug. 14—Authorizing C.P.R. to construct branch line of railway in Lot 6, Con. 9, Twp. of Palmerston, Co. of Frontenac, Ont., to serve M. G. Henniger Limited.

The Board of

Transport Commissioners for Canada

Judgments, Orders, Regulations and Rulings

Vol. XXXIV

Ottawa, September 15, 1944

No. 12

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Application of Canadian Pacific Railway Company, under Section 165A, of The Railway Act and all other appropriate statutory provisions, for an Order granting it leave to abandon the operation of that portion of the Hereford Subdivision of the Canadian Pacific Railway Company, between a point just south of Sawyerville, mileage 7.5 and Malvina, mileage 22.8, a distance of 15.3 miles, in the Province of Quebec.

File No. 39309.23

Mr. L. G. Prevost, K.C., appeared for the Canadian Pacific Railway Company. Mr. B. N. Holtham, K.C., for the Compton Council; and Mr. Evanden Veilleux, for the municipalities and localities along or adjacent to the railway.

Heard at Sherbrooke, Que., on June 21 and 22, 1944.

JUDGMENT

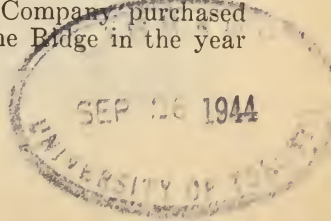
CROSS, CHIEF COMMISSIONER:

The Canadian Pacific Railway Company, hereinafter sometimes called the Company, by its application as amended, applies to the Board, under Section 165A of the Railway Act and all other appropriate statutory provisions, for an Order granting it leave to abandon the operation of that portion of the Hereford Subdivision of the Canadian Pacific Railway Company, between a point just south of Sawyerville, mileage 7.5, and Malvina, mileage 22.8, a distance of 15.3 miles, in the Province of Quebec.

Following the practice in such cases an inspection of the line in question and of conditions in the community served by it was made by a District Engineer and a District Inspector of Operation of the Board, on May 25, 1944. Following such inspections on the ground, each of the said officers presented his report in writing to the Board.

It would seem desirable to give some of the historical background of the line of railway.

This line started with the construction of a railroad between Lime Ridge (Quarry) and Dudswell to connect with the Quebec Central Railway at that point, by the Dominion Lime Company in 1887, a distance of 4.32 miles. In 1887 The Hereford Branch Railway Company was incorporated by Chapter 93, Statutes of Canada, 1887. By Chapter 81, Statutes of Canada, 1888, the name was changed to The Hereford Railway Company. This Company purchased the Dominion Lime Company's line from Dudswell to Lime Ridge in the year



1888. By these statutes this Company was authorized to construct a railway in the Counties of Compton and Wolfe from the International Boundary at Hereford to Lime Ridge, a distance of 48 miles. In 1890 the line was built from Dudswell, on the Quebec Central Railway, to Cookshire, on the Canadian Pacific Railway and through to the International Boundary at Hereford, near Beecher Falls in the State of Maine, with the aid of subsidies from the Dominion amounting to \$170,560, and from the Province of Quebec, amounting to \$84,226.36. One of the conditions of the grant of the Dominion subsidies was that the railroad should be continuously and faithfully operated and kept in good working and running order.

By Dominion statute, Chapter 73 of 1890, the Hereford Railway Company was authorized to lease the railroad and its franchises to the Maine Central Railroad Company, with which Company's railroad in the State of Maine the Hereford Railway made connections at Hereford. A lease was accordingly made for 999 years, under which the Hereford Railway Company's railroad was operated until November 1, 1925.

Under authority of Dominion Statutes of 1887 and 1889, bonds of the Hereford Railway Company were issued to the amount of \$800,000, and were constituted a mortgage and privilege on the property of the railway and its assets, rents and revenues, save as to working expenses. Pursuant to the terms of the lease, the Maine Central Railroad Company guaranteed and endorsed the bonds. Maine Central Railroad Company having up to December 31, 1923, operated the railway at a loss of \$1,639,359.63, and having become owner of the large majority of the shares of the Hereford Railway Company, the Maine Central arranged an agreement between the two companies for cancellation of the lease, as provided by an agreement dated September 8, 1925, without obtaining statutory authority for such cancellation. After cancellation of the lease the rolling stock and all equipment of the Maine Central was removed and operation of the railway was discontinued.

The municipalities petitioned the Minister of Railways and Canals for redress under Section 160 of the Railway Act. The Minister, under the provisions of said Section 160, made application to the Board, and on April 1, 1926, the Board, by its Order No. 37438 ordered that, within eight days from the date of the Order, the Hereford Railway Company be directed to put its railway in good and sufficient working order, to re-equip it with the necessary rolling stock, and continuously and faithfully to operate it.

The Hereford Railway Company having failed to comply with the Order of the Board, the Minister commenced an action in the Exchequer Court of Canada to enforce a lien in favour of His Majesty on the properties of the Hereford Railway Company, in respect to the subsidies granted to that Company. Judgment was given, ordering a sale, and tenders were called for. For reports of the proceedings see the Minister of Railways and Canals for the Dominion of Canada *vs.* The Hereford Railway Company (1928), C.L.R., Exchequer Court 223, and on appeal to the Supreme Court, see (1930) C.L.R., Supreme Court 37.

The tender of the Canadian Pacific Railway Company was accepted, and by the judgment of the Exchequer Court, dated May 25, 1927 (Exhibit 1), the railway and its accessories were sold to the Canadian Pacific Railway Company for \$46,378, the whole upon the terms and conditions, as follows:—

1. That the Canadian Pacific Railway Company shall not be required to operate and shall not undertake to operate at any time those portions of the railway between Cookshire and Lime Ridge and between Malvina and the international boundary, but shall be at liberty to take up the rails and fastenings on the said portions of the railway and dispose of the same, or dispose of the whole of the said portions of the railway, or any part thereof, as it may see fit.

2. That the Canadian Pacific Railway Company will within three months from the completion of the purchase commence the operation of the portion of the railway between Cookshire and Malvina with at least three mixed trains a week each way, but its obligations to continue the operation of such portion shall be subject to the law governing railways subject to the jurisdiction of the Parliament of Canada.

3. That the purchase price shall be paid to the registrar of the Exchequer Court of Canada upon the passing of title to the property upon the terms aforesaid.

From the foregoing it will be seen that, under the terms of purchase, the Company was only required to operate that portion of the Hereford Railway between Cookshire and Malvina, and subject to the laws governing railways subject to the jurisdiction of the Parliament of Canada. The obligations of the Company to operate are therefore subject to the provisions of the Railway Act of Canada.

The situation in respect to the balance of the Hereford Railway which was purchased by the Company and which it was not required to operate is as follows: From Lime Ridge to Dudswell Junction, a distance of about five miles, the line is under lease from the Company to the Brampton Pulp and Paper Company, and is used by that Company as a siding. Between Dudswell Junction and Cookshire, and between Malvina and the International Boundary the rails were taken up by the Company and the line salvaged shortly after the completion of the purchase in 1927.

The Company operated that portion of the Hereford Railway line which, according to the terms of purchase, it undertook to operate between Cookshire and Malvina from the time the same was acquired in the year 1927 until June 15, 1943. During that period the Company operated mixed trains three days per week each way until 1932, and then two days per week until 1940. In April 1940, the mixed service was discontinued and a straight freight service substituted for the summer months, as business required. In November of 1940 the Company went back to the twice a week mixed service for the winter. This class of winter and summer service was continued until June 15, 1943.

On June 15, 1943, heavy rainfall caused very serious washouts and other damages to the line, particularly between Sawyerville and Malvina, which rendered this portion of the line unfit for operation. As a result traffic was terminated indefinitely between Saywerville and Malvina pending repair of the roadbed.

The balance of the Hereford Railway line from Sawyerville to Cookshire, a distance of 7.5 miles, is presently in operation. It is the intention of the Company to continue this operation.

The line between Sawyerville and Malvina, a distance of 15.3 miles, was not rehabilitated, and on December 18, 1943, the Company filed with the Board its present application for leave to abandon the operation of that portion of the line.

The Hereford Subdivision with which we are concerned here may be described as a minor branch line.

The damage done to that part of the railway between Sawyerville and Malvina, by the heavy rainfall on June 15, 1943, is of a substantial nature. The Company's estimate of the cost of rehabilitating the line and restoring it to the condition which it was in just prior to June 15, 1943, is \$55,000.00. Full particulars of how the amount is made up was given in evidence at the hearing by the Division Engineer of the Company. A District Engineer of the Board who went over the line on July 14 and 15, 1943, and again on May 25, 1944, reports that, in his opinion, the cost would exceed \$50,000.00. Upon consideration of all that is before us on this point, I think that \$55,000.00 is a fair and reason-

able estimate of the cost of rehabilitating the line to the condition it was in prior to its damage by the heavy rains referred to.

The chief industries of the territory through which the line of railway passes are mixed farming and lumbering. The area was at one time all, or practically all, heavily wooded. Substantial areas are still well wooded and the products of the forest are likely to continue to be of importance for a considerable period of time. Large areas have been cleared, brought under cultivation and settled upon by an industrious people who farm the land and engage in dairying and stock raising. The products of the forest consist of pulp wood, logs for sawing into lumber of different kinds and fire wood. Of these, pulp wood is probably the most important.

The stations or points on the portion of the Hereford Subdivision, in respect to which leave to abandon is asked, are as follows, starting at a point just south of Sawyerville, at mileage 7.5:—Clifton, at mileage 11.9 a distance of 4.4 miles from Sawyerville; St. Isidore at mileage 13.6 a distance of 1.7 miles from Clifton; St. Malo at mileage 17.7, a distance of 4.1 miles from St. Isidore; and Malvina at mileage 22.8, a distance of 5.1 miles from St. Malo.

Sawyerville is not affected by the application. The railway from that point to Cookshire is to remain in operation.

At Clifton there is a small wooden railway station and a passing track. The population is about 100, scattered in a radius of two miles. The point is served by a rural highway which connects with No. 27 Provincial Highway. The industries consist of one saw mill employing, on an average, about twelve men. There is also another saw mill, inoperative and unfit for further service. If the application is granted the nearest alternative railway shipping point will be Sawyerville, a distance of 6.5 miles by road.

At St. Isidore there is a small wooden railway station situated in the centre of the village of the same name. There is a population of 500 within a mile of the station and about 800 in the surrounding parish. The industries consist of one co-operative creamery employing about three men; one sash and door factory employing, on the average, five men; and one saw mill employing an average of eight men. If the application is allowed the nearest alternative railway shipping point will be Sawyerville, a distance of 9.1 miles by road. St. Isidore is served by a fairly good secondary road which connects with No. 27 Provincial Highway.

At St. Malo there is a small wooden station building. The village, which is located about three miles from the station, is on No. 27 Provincial Highway. It has a population of about 400 people and the surrounding parish about 600. The industries consist of one co-operative creamery and butter factory, and one saw mill which employs an average of fifteen men. If the application be granted the closest alternative railway shipping point for St. Malo will be Sawyerville, a distance of about thirteen miles by highway.

At Malvina, the south end of the line proposed for abandonment, there is a small railway station. There is no village at this point and the parish is small. There are no industries but several cordwood dealers are located there. The roads in the area are rather poor, but connection with Provincial Highway No. 27 is made at the village of St. Malo. The distance by road from Malvina to Sawyerville is given at 16.6 miles, which would be the nearest alternative railway shipping point if the line is abandoned, except for Beecher Falls, on the Maine Central Railroad, just south of the International Boundary, a distance of 15.4 miles.

The Village of Paquetteville, located about six miles by road south from Malvina, has a population of about 325. This was formerly a station on that portion of the Hereford Railway which was abandoned in the year 1927. It is a trading centre for a number of farmers. There is located at this point a

general store and a creamery. When the line of railway between Sawyerville and Malvina was in operation the people used St. Malo chiefly as their railway shipping point during the summer season, as the roads were better to that point than to Malvina. In the winter, even when the railway was operating, they used to a considerable amount, Coaticook, a station on the Canadian National Railways almost due west of Paquetteville. This on account of the fact that the highway was kept open from Paquetteville through Beecher Falls and Norton Mills in the United States, and thence north on No. 22 Provincial Highway to Coaticook. The alternative shipping points, if the line of railway is abandoned, would be Sawyerville, a distance of nineteen miles over Provincial Highway No. 27, and Coaticook, on the Canadian National Railways, a distance by road of 16.5 miles in the summer time, but much longer by the highway used in the winter. Beecher Falls on the Maine Central is about ten miles by road from Paquetteville.

The only means of transportation, if railway service is discontinued south of Sawyerville from mileage 7.5 to Malvina, mileage 22.8, would be by motor vehicles, horse drawn vehicles and snowmobile. A substantial number of the people in the area affected own automobiles or trucks.

The inward and outward carload traffic on the line of railway for the years 1941, 1942 and 1943 to June 15th was as follows:—

Year	In	Out	Grand Total
1941	18	209	227
1942	77	109	186
1943 to June 15.....	36	39	75

The inward carload traffic during the period consisted of flour and feed, fertilizer, feed grain and limestone. The outward carload traffic for the same period was made up of cordwood, slabs, edgings, lumber, ties, Christmas trees, livestock and pulpwood. Only ten carloads consisted of pulpwood.

The line of railway proposed for abandonment has been operated at a loss. The following shows the result for the period mentioned hereunder taking into account the revenues of the branch line, as such, and the revenues accruing to the balance of the system and credited to the branch line; and the out of pocket expenses of the branch and the expenses incurred on the balance of the system and properly debited to the branch line:—

Year	Total Revenue	Total Out of Pocket	
		Expenses	System Loss
1941	\$13,111	\$17,800	\$4,689
1942	12,098	18,282	6,184
1943 to June 15..	6,177	13,358	7,181

There has been a substantial decline over a period of years, in the earnings of the portion of the Hereford Subdivision with which we are concerned, namely, from mileage 7.5 just south of Sawyerville (omitting Sawyerville), to and including Malvina at mileage 22.8. This is shown by the following gross earnings which include both the branch line earnings and the system earnings credited to the branch line, namely: 1931, \$42,438; 1932, \$37,792; 1933, \$33,295; 1934, \$46,946; 1935, \$27,861; 1936, \$20,150; 1937, \$29,350; 1938, \$15,539; 1939, \$19,371; and 1940, \$12,814.

From what has been stated earlier it will be seen that the Hereford Railway has had, almost from its inception, an unfortunate history both from the financial result of its operation, and from the point of view of service to the area which it was constructed to serve.

In this case, as in the case of all other short branch railway lines, the earnings of the Company have suffered much over a period of years from the competition of highway motor carriers, and from the use of privately owned

motor trucks and automobiles by people who otherwise would have used, to a greater degree, the rail transport available. This condition applies to both inward and outward movement of traffic.

As previously pointed out, pulpwood has been for many years one of the main products of the district through which the railway is located. For several years prior to the year 1942, most of this pulpwood, and also a substantial quantity of logs for lumber, found their best and most profitable market in the United States. These materials were consequently transported largely by truck to Beecher Falls, on the Maine Central Railroad and to other points off the branch line for shipment to that market.

Prior to the year 1942 pulp and other wood products had been allowed to go across the International Border without any restrictions, but in that year, because of war necessity certain restrictions were imposed against the export of pulpwood and logs for lumber. A licence to export these products is required and persons who were accustomed to exporting such products without restriction are now allowed to export only a certain quota of their previous shipments. In 1943 this quota represented about fifty or sixty per cent of each person's original shipment. For the present year the quota has been further reduced.

Because of the restrictions on export referred to, a much greater proportion of these products of the forest must find their way now to Canadian mills. Several thousand cords of pulpwood and a large quantity of cordwood are piled ready for transport, at different places in the vicinity of the railway proposed for abandonment. On behalf of the County of Compton and the several Municipalities interested it is submitted that, if the branch line were in operation much of this material would be shipped over the railway. It is, in fact, urged that the restoration and operation of the line is essential for this purpose alone.

If the line of railway were in operation, it is likely that an increased quantity of pulpwood would be shipped over it during the continuance of the present export restrictions. It is, I think, however, reasonable to assume that the restrictions on export are of a temporary nature. As earlier shown, only ten earloads of pulpwood were shipped over the branch line during the period January 1, 1941, to June 15, 1943.

A problem facing transport by road and highway, in the districts concerned, is the difficulty in procuring new motor trucks when required, and also new tires and parts for trucks and other motor vehicles when the old ones are worn out. There is a great scarcity of these articles because of wartime restrictions placed on their manufacture for civilian use. The requirements of our armed forces for motor vehicles of all kinds has been and is very great. This demand, of necessity, is given priority.

The areas affected are fairly well served with highways and roads. The best and most important of these is Provincial Highway No. 27 which runs south from Sawyerville to a point due west of St. Malo Village, thence east to St. Malo Village, thence southeast to Paquetteville, and thence in a south-westerly direction to a point on the International Boundary a little west of Beecher Falls. The worst feature of transport by road is the winter snow condition. Only part of the roads and highway have, in the past, been cleared of snow. If the operation of the line is abandoned it will be necessary that more roads be kept cleared of snow for winter travel than if the line were operated. This will put some additional financial burdens on the Province of Quebec, the Municipalities, and possibly on certain individuals as well, as each has in the past contributed to the cost of keeping certain of the roads and highways open for winter travel.

If the application be granted the distance to and from a railway shipping centre will be substantially increased for a considerable number of people. This in itself would occasion inconvenience and loss of time. For like reason the cost of carriage of the products to and from the alternative railway points will be

increased. The merchants and dealers who carry on business in the villages will also be put to some additional transportation expense in securing the goods which they carry and retail to farmers and other customers. This expense must of necessity be included in the sale price of the goods and passed on to the consumer. While the amount would not be large to any one person it would be a certain additional financial burden to the community.

Counsel for Compton County Council raised the question of the possible effect of the Dominion legislation under the authority of which the subsidies were granted to the Hereford Railway Company, upon the authority of the Board to grant the application. In my opinion this can have no application here, in view of the circumstances and conditions under which the Company acquired the branch line of railway as previously fully explained.

Section 165A, under which the application is made, was introduced as an amendment to the Railway Act by Chap. 47 of 1933. It reads as follows:

"165A. The Company may abandon the operation of any line of railway with the approval of the Board, and no company shall abandon the operation of any line of railway without such approval."

Prior to the enactment of the amendment of 1933 a railway company might abandon an unprofitable portion of its line of its own motion, unless there were some restriction on it so doing either in its Act of Incorporation or under the terms of some contract or Agreement.

The amendment to the Railway Act in 1933 was intended to make certain that the interests of the public should at least be considered before abandonment of the operation of a line of railway could take place. In dealing with such applications the Board has followed the rule that each application must be determined by the particular facts and circumstances surrounding each case.

The Board, in the case of *Canadian National Railways vs. Tweed* (1935), 44 C.R.C. 53, laid down, as a guiding principle, that the issue in each case where abandonment is sought resolves itself into a question of "whether the loss and inconvenience to the public consequent upon the abandonment outweighs the burden that continued operation of the railway line involved would impose upon the railway company".

This guiding principle has since been uniformly followed by the Board when dealing with similar applications, and is, in my opinion, applicable to the case now under consideration.

It may be, if the line were rehabilitated and put into operation, that there would be some temporary improvement in the amount of traffic offered for carriage by rail, due to prevailing wartime restriction on the export of pulp and other forest products, and because of present restrictions on the manufacture for civilian use of motor trucks, to which reference is made above. But, having regard to the result of the operation of the line of railway over several years, and taking into full account possible future traffic, I do not think that any substantial improvement in the situation can be looked for with much confidence.

The estimated cost of rehabilitating the line of railway before it can again be put into operation is \$55,000. This considerable outlay that would be necessary on the part of the Company is, I think, also a factor which should be taken into consideration.

The case for the County and the Municipalities in opposition to the application, was most thoroughly and completely presented to us through the evidence of many witnesses, and by the able submission and argument of Counsel for the County and for the several Municipalities concerned. We have also had the advantage of a thorough presentation of the applicant's case by Counsel for the Company.

Upon most earnest and careful consideration of all that has been placed before us I have reached the conclusion that the burden that would be placed

upon the railway Company of rehabilitating the line and the resumption and continuation of its operation, in this case, outweighs the loss and inconvenience to the public consequent upon the abandonment.

I would grant the application. There will be an Order accordingly.

Dated, Ottawa, August 14, 1944.

J. A. CROSS.

I concur:

HUGH WARDROPE.

J. A. STONEMAN.

(Traduction)

LA COMMISSION DES TRANSPORTS DU CANADA

Requête de la compagnie de chemin de fer Pacifique-Canadien demandant en vertu de l'article 165A de la Loi des chemins de fer et de toutes autres dispositions statutaires appropriées l'autorisation de discontinuer l'exploitation de la partie de sa subdivision Hereford située entre un endroit juste au sud de Sawyerville, au mille 7.5, et Malvina, au mille 22.8, soit une distance de 15.3 milles, dans la province de Québec.

Dossier n° 39309.23

Me L.-G. PRÉVOST, C.R., comparut pour la compagnie de chemin de fer Pacifique-Canadien.

Me B.-N. HOLTHAM, C.R., comparut pour le conseil du comté de Compton, et Me EVANDEN VEILLEUX pour les municipalités et les localités parallèles ou contiguës au chemin de fer.

Cause entendue à Sherbrooke, P.Q., les 21 et 22 juin 1944.

JUGEMENT

CROSS, *Commissaire en chef.*

La compagnie de chemin de fer Pacifique-Canadien, ci-après appelée quelquefois la compagnie, par sa requête telle qu'amendée, demande à la Commission, en vertu de l'article 165A de la Loi des chemins de fer et de toutes autres dispositions statutaires appropriées, une ordonnance l'autorisant à discontinuer l'exploitation de la partie de sa subdivision Hereford située entre un point juste au sud de Sawyerville, au mille 7.5, et Malvina, au mille 22.8, soit une distance de 15.3 milles, dans la province de Québec.

Conformément à la pratique suivie dans les cas semblables, une inspection de la ligne en question et des conditions dans les localités desservies par ladite ligne a été faite par un ingénieur de district et un inspecteur d'exploitation ferroviaire de la Commission, le 25 mai 1944. A la suite de cette inspection chacun de ces officiers a soumis un rapport par écrit à la Commission.

Il semblerait opportun de faire l'historique de cette ligne de chemin de fer.

Cette ligne commença à exister lors de la construction, en 1887, par la compagnie Dominion Lime, d'un chemin de fer entre Lime Ridge (carrière) et Dudswell, soit une distance de 4.32 milles, pour établir un raccordement avec le chemin de fer Quebec Central à ce dernier endroit. En 1887, la Hereford Branch Railway Company fut constituée en corporation en vertu du chapitre 93 des statuts du Canada de 1887. En vertu du chapitre 81 des statuts du Canada de 1888, le nom fut changé en celui de Hereford Railway Company. En 1888, cette dernière fit l'acquisition de la ligne de la compagnie Dominion Lime, de

Dudswell à Lime Ridge. En vertu de ces lois, ladite compagnie de chemin de fer Hereford fut autorisée à construire une ligne de chemin de fer dans les comtés de Compton et de Wolfe, à partir de la frontière internationale, à Hereford, jusqu'à Lime Ridge, soit une distance de 48 milles.

En 1890, la ligne fut construite de Dudswell, sur le chemin de fer Quebec Central, jusqu'à Cookshire, sur le Pacifique-Canadien, près de Beecher Falls, dans l'Etat du Maine, avec l'aide de subsides accordés par le Gouvernement fédéral au montant de \$170,560, et par le Gouvernement provincial de Québec au montant de \$84,226.36. Une des conditions de l'octroi de subsides par le Gouvernement fédéral était que le chemin de fer devait être exploité continuellement et loyalement et tenu en bon état de service.

En vertu du chapitre 73 des statuts fédéraux de 1890, la compagnie de chemin de fer Hereford fut autorisée à louer à bail le chemin de fer et ses franchises à la compagnie de chemin de fer Maine Central, avec la ligne de laquelle compagnie le chemin de fer Hereford faisait raccordement à Hereford. Un bail fut dressé en conséquence pour une durée de 999 ans, en vertu duquel la ligne de la compagnie de chemin de fer Hereford fut exploitée jusqu'au 1er novembre 1925.

En vertu des statuts fédéraux de 1887 et de 1889, des obligations de la compagnie de chemin de fer Hereford furent émises jusqu'au montant de \$800,000 et constituèrent une hypothèque et privilège sur la propriété de la compagnie et sur ses biens, loyers et revenus, sauf pour ce qui concerne les frais d'exploitation. En conséquence des termes du bail, la compagnie de chemin de fer Maine Central garantit et endossa les obligations. Ayant, jusqu'au 31 décembre 1923, exploité le chemin de fer avec une perte de \$1,639,359.63, et étant devenue propriétaire d'une grande majorité des actions de la compagnie de chemin de fer Hereford, la compagnie de chemin de fer Maine Central fit un arrangement avec la compagnie de chemin de fer Hereford en vue de la révocation du bail, tel qu'il appert au contrat daté du 8 septembre 1925, sans avoir obtenu l'autorité statutaire pour telle révocation. A la suite de la révocation du bail, le matériel roulant et tout l'équipement du Maine Central furent enlevés et l'exploitation du chemin de fer discontinuée.

Les municipalités s'adressèrent alors au ministre des chemins de fer et canaux en vertu de l'article 160 de la Loi des chemins de fer. Le ministre, en vertu des dispositions dudit article 160, adressa une requête à la Commission, et le 1er avril 1926 la Commission, par son ordonnance n° 37438, ordonna que dans les huit jours de la date de l'ordonnance, la compagnie de chemin de fer Hereford soit requise de remettre sa ligne en bon état d'exploitation, de la pourvoir de nouveau d'un matériel roulant nécessaire, et de l'exploiter continuellement et loyalement.

La compagnie de chemin de fer Hereford ayant fait défaut de se conformer à l'ordonnance de la Commission, le ministre intenta une action en la Cour de l'Echiquier du Canada pour faire valoir un gage privilégié en faveur de Sa Majesté sur les propriétés de la compagnie de chemin de fer Hereford, en rapport avec les subsides accordés à cette compagnie. Jugement fut rendu ordonnant la mise en vente et l'on demanda des soumissions. Au sujet des rapports sur les procédures, voir la cause du ministre des chemins de fer et canaux du Canada v. la compagnie de chemin de fer Hereford (1928) C.L.R., Cour de l'Echiquier 223, et sur l'appel à la Cour Suprême, voir (1930) C.L.R., Cour Suprême 37.

La soumission de la compagnie de chemin de fer Pacifique-Canadien fut acceptée, et en vertu d'un jugement de la Cour de l'Echiquier, en date du 25 mai 1927, (exhibit n° 1), le chemin de fer et ses accessoires furent vendus à la compagnie de chemin de fer Pacifique-Canadien pour la somme de \$46,378, le tout d'après les conditions et termes suivants:

"1. La compagnie de chemin de fer Pacifique-Canadien ne sera pas requise d'exploiter et n'entreprendra pas d'exploiter en aucun temps les

parties de la ligne du chemin de fer situées entre Cookshire et Lime Ridge, et entre Malvina et la frontière internationale, mais sera libre d'enlever les rails et le boulonnage sur ces dites parties du chemin de fer et de disposer de tout le chemin de fer ou d'une partie dudit chemin de fer comme bon lui semblera.

"2. La compagnie de chemin de fer Pacifique-Canadien commencera, dans les trois mois de la date d'exécution de l'achat, l'exploitation de la partie du chemin de fer située entre Cookshire et Malvina avec au moins trois trains mixtes par semaine dans chaque direction, mais l'obligation de continuer l'exploitation de cette dite partie de ligne sera sujette à la Loi régissant les chemins de fer relevant de la juridiction du Parlement du Canada.

"3. Le prix d'achat sera payé au registraire de la Cour de l'Echiquier du Canada lors du transfert du titre à la propriété conformément aux termes ci-dessus."

D'après ce qui précède l'on pourra constater qu'en vertu des termes de l'achat, la compagnie n'était requise d'exploiter que cette partie du chemin de fer Hereford située entre Cookshire et Malvina, sujette aux Lois régissant les chemins de fer relevant de la juridiction du Parlement du Canada. L'obligation de la compagnie d'exploiter le chemin de fer en question est, en conséquence, sujette aux dispositions de la Loi des chemins de fer.

La situation concernant le reste du chemin de fer Hereford que la compagnie a acquis et qu'elle n'était pas obligée d'exploiter est comme suit: de Lime Ridge à Dudswell Junction, une distance d'environ 5 milles, la ligne est louée à bail par la compagnie à la Brampton Pulp and Paper Company et utilisée par cette dernière comme voie industrielle. Entre Dudswell Junction et Cookshire, et entre Malvina et la frontière internationale, les rails ont été enlevés par la compagnie et l'on a disposé de la ligne peu de temps après que l'achat fut complété en 1927.

La compagnie exploita cette partie du chemin de fer Hereford que d'après les termes de l'achat elle s'engagea d'exploiter entre Cookshire et Malvina, à compter de la date de son acquisition, en 1927, jusqu'au 15 juin 1943. Durant cette période, la compagnie opéra un service de trains mixtes trois jours par semaine dans chaque direction jusqu'en 1932, et ensuite deux jours par semaine jusqu'en 1940. En avril 1940, le service mixte fut discontinué et un service de marchandises seulement y fut substitué durant les mois d'été, selon les exigences. En novembre 1940, la compagnie rétablit le service de trains mixtes semi-hebdomadaire durant l'hiver. Tels services d'hiver et d'été furent continués jusqu'au 15 juin 1943.

Le 15 juin 1943, des pluies intenses ont causé de sérieux affouillements et autres dommages à la ligne, particulièrement entre Sawyerville et Malvina, lesquels ont rendu cette partie de la ligne impropre à l'exploitation. Cela eut pour résultat la suspension indéfinie de l'opération de la ligne entre Sawyerville et Malvina jusqu'à la réfection de ladite ligne.

Le reste de la ligne du chemin de fer Hereford, de Sawyerville à Cookshire, une distance de 7.5 milles, est actuellement exploité et c'est l'intention de la compagnie de continuer ce service.

La partie de la ligne entre Sawyerville et Malvina, une distance de 15.3 milles, n'a pas été rétablie. Le 18 décembre 1943, la compagnie adressa à la Commission la présente requête demandant l'autorisation de discontinuer l'exploitation de cette partie de la ligne.

La subdivision Hereford qui nous concerne actuellement peut être désignée comme ligne d'embranchement d'importance secondaire.

Les dommages causés à cette partie du chemin de fer, entre Sawyerville et Malvina, par la chute de pluie intense le 15 juin 1943 ont été considérables. La compagnie a évalué le coût de rétablissement de la ligne à l'état qu'elle était avant le 15 juin 1943 au montant de \$55,000. Un exposé détaillé de la composition de ce montant a été donné à l'audition de la cause par l'ingénieur de division de la compagnie. Un ingénieur de district de la Commission qui a examiné la ligne les 14 et 15 juillet 1943 et le 25 mai 1944, a fait rapport que les frais de rétablissement de la ligne s'élèveraient au delà de \$50,000. Après considération de tout ce qui nous a été soumis relativement à ce point, je crois que le montant de \$55,000 est une évaluation juste et raisonnable du coût de rétablissement de la ligne à l'état qu'elle se trouvait avant qu'elle ne fût détériorée par les pluies intenses ci-dessus mentionnées.

Les principales industries dans le territoire que traverse cette ligne de chemin de fer sont la culture mixte et l'exploitation forestière. Autrefois, ce territoire était tout, ou presque tout, fortement boisé. Des étendues considérables sont encore bien boisées et les produits forestiers auront encore probablement une certaine importance durant une longue période de temps. De grandes étendues ont été déboisées, mises en culture et colonisées par des gens industriels qui cultivent la terre et qui se livrent à l'élevage des animaux et à l'industrie laitière. Les produits forestiers sont le bois de pulpe, les billes pour débitage en bois de construction de diverses sortes et le bois de chauffage. De ces produits, le bois de pulpe est probablement le plus important.

Les stations ou localités sur la partie de la subdivision Hereford dont on demande l'abandon sont les suivantes, à partir d'un point juste au sud de Sawyer-ville, au mille 7.5: Clifton, situé au mille 11.9, une distance de 4.4 milles de Sawyer-ville; St-Isidore, au mille 13.6, une distance de 1.7 mille de Clifton; St. Malo, au mille 17.7, une distance de 4.1 milles de St-Isidore, et Malvina, au mille 22.8, une distance de 5.1 milles de St-Malo.

Sawyerville n'est pas affecté par la requête. De Sawyer-ville à Cookshire le chemin de fer continuera d'être exploité.

A Clifton, il y a une petite station en bois et une voie de rencontre. La population est d'environ 100 personnes, dispersées dans un rayon de deux milles. Cet endroit est desservi par une route rurale qui fait raccordement avec la route provinciale n° 27. Il y existe une scierie qui emploie en moyenne une douzaine de personnes. Une autre scierie est inopérante et inapte à être remise en opération. Dans le cas où la requête serait accordée, le point d'expédition ferroviaire alternatif le plus rapproché serait Sawyer-ville, situé à une distance de 6.5 milles par route.

A St-Isidore il y a une petite station en bois située au centre du village. La population est de 500 âmes en dedans d'un mille de la station, et de 800 dans la paroisse avoisinante. Les industries consistent en une crèmerie coopérative où l'on emploie environ trois hommes; une usine de châssis et portes, où l'on emploie en moyenne cinq hommes, et une scierie où l'on emploie en moyenne huit hommes. Dans le cas où la requête serait accordée, le point d'expédition ferroviaire alternatif le plus rapproché serait Sawyer-ville, situé à une distance de 9.1 milles par route. St-Isidore est desservi par une route secondaire passablement bonne qui se relie à la route provinciale n° 27.

A St-Malo il s'y trouve une petite station en bois. Le village, qui est à environ trois milles de la station, est situé sur la route provinciale n° 27. Il y a une population d'environ 400 âmes, et dans la paroisse avoisinante une population d'environ 600 âmes. Les industries consistent en une coopérative laitière et en une scierie qui emploie en moyenne quinze hommes. Dans le cas où la requête serait accordée, le point d'expédition ferroviaire alternatif le plus rapproché pour St-Malo serait Sawyer-ville, situé à une distance d'environ 13 milles par route.

A Malvina, l'extrémité sud de la ligne que l'on projette d'abandonner, il y a une petite station de chemin de fer. Il n'y a pas de village et la paroisse est peu considérable. Il n'y a aucune industrie, mais il y a plusieurs marchands de bois de corde. Les chemins dans les environs sont plutôt de qualité inférieure, mais il y a un raccourcement avec la route provinciale n° 27 dans le village de St-Malo. La distance par route de Malvina à Sawyerville est rapportée comme étant de 16.6 milles; ce dernier endroit constituerait le point d'expédition ferroviaire alternatif le plus rapproché si la ligne était abandonnée, à moins que l'on ne tienne compte de Beecher Falls, sur le chemin de fer Maine Central, situé juste au sud de la frontière internationale à une distance de 15.4 milles.

Le village de Paquetteville, situé au sud de Malvina, à environ 6 milles par route, a une population approximative de 325 âmes. Ce village se trouvait autrefois sur cette partie du chemin de fer Hereford qui fut abandonnée en 1927. C'est un centre commercial pour un nombre de cultivateurs. Il se trouve à cet endroit un magasin général et une crèmerie. Lorsque la ligne de chemin de fer entre Sawyerville et Malvina était exploitée, les gens utilisaient St-Malo principalement comme point d'expédition ferroviaire pendant les mois d'été, vu que les chemins conduisant à cet endroit étaient meilleurs que les chemins conduisant à Malvina.

Durant l'hiver, même lorsque le chemin de fer était exploité, les gens utilisaient considérablement la station de Coaticook, située sur le Canadien-National, presque directement à l'ouest de Paquetteville, à cause du fait que la route était tenue ouverte de Paquetteville, via Beecher Falls et Norton Mills, dans les Etats-Unis, de là vers le nord sur la route provinciale n° 22 jusqu'à Coaticook. Les points d'expédition alternatifs, si la ligne est abandonnée, seront Sawyerville, situé sur la route provinciale n° 27, à une distance de 19 milles, et Coaticook sur le Canadien-National, situé à une distance de 16.5 milles par la route dont on se sert durant les mois d'été, mais à une distance beaucoup plus longue par la route utilisée durant les mois d'hiver.

Beecher Falls, sur le Maine Central, est à environ 10 milles par route de Paquetteville.

Si le service ferroviaire est discontinué au sud de Sawyerville, à partir du mille 7.5, jusqu'à Malvina, au mille 22.8, le seul moyen de transport sera par véhicules-automobiles, par véhicules à traction animale et par autoneiges. Un nombre substantiel de personnes dans le territoire affecté possèdent des automobiles ou des camions.

Le nombre de wagons complets qui ont circulé dans les deux sens sur cette ligne durant les années 1941 et 1942 et jusqu'au 15 juin 1943, se répartit comme suit:

<i>Année</i>	<i>•Arrivant</i>	<i>Partant</i>	<i>Total</i>
1941	18	209	227
1942	77	109	186
1943 (jusqu'au 15 juin.)	36	39	75

Les wagons complets reçus durant la période ci-dessus comprenaient de la farine et de la pâture, de l'engrais, du grain alimentaire et de la pierre calcaire. Les wagons complets expédiés, pour la même période, comprenaient du bois de corde, des croûtes, du bois de taille, du bois de construction, des traverses, des arbres de Noël, des bestiaux et du bois de pulpe. Dix wagons seulement comprenaient du bois de pulpe.

La ligne de chemin que l'on projette d'abandonner a été exploitée à perte. Le tableau ci-dessous indique le résultat de son exploitation pour les périodes qui y sont mentionnées, compte tenu des revenus de la ligne d'embranchement proprement dite et des revenus afférents au reste du réseau et crédités à la ligne d'embranchement et des frais d'entretien de la ligne d'embranchement, ainsi que

des frais encourus sur le reste du réseau et proprement chargés à ladite ligne d'embranchement.

<i>Année</i>	<i>Revenu Total</i>	<i>Total des Déboursés</i>	<i>Déficit du Réseau</i>
1941	\$ 13,111	\$ 17,800	\$4,689
1942	12,098	18,282	6,184
1943 (jusqu'au 15 juin)	6,177	13,358	7,181

Il y a eu au cours d'un certain nombre d'années une baisse substantielle des revenus provenant de cette partie de la subdivision Hereford qui nous concerne, savoir du mille 7.5, juste au sud de Sawyerville (Sawyerville non compris), jusqu'à et y compris Malvina au mille 22.8. Cette baisse de revenus est démontrée par les recettes brutes indiquées ci-dessous, qui comprennent les recettes de la ligne d'embranchement ainsi que les recettes du réseau qui sont portées au crédit de ladite ligne d'embranchement, savoir:

1931, \$42,438; 1932, \$37,792; 1933, \$33,295; 1934, \$46,946; 1935 \$27,861; 1936, \$20,150; 1937, \$29,350; 1938, \$15,539; 1939, \$19,371, et 1940, \$12,814.

D'après ce qui a été relaté ci-dessus, l'on constatera que l'histoire du chemin de fer Hereford n'a pas été très heureuse presque dès son début, tant au point de vue du résultat financier de son exploitation que du point de vue du service fourni au territoire qu'il était appelé à desservir.

Dans le cas présent comme dans celui de toutes autres lignes d'embranchement de courte distance, les revenus de la compagnie ont beaucoup diminué durant un certain nombre d'années, du fait de la concurrence du transport automobile et de l'usage des camions et des automobiles privés par des gens qui, sans ces véhicules, auraient fait un plus grand usage du moyen de transport ferroviaire disponible. Cette condition s'applique aussi bien au trafic arrivant qu'au trafic partant.

Tel que mentionné ci-dessus, le bois de pulpe a été pendant plusieurs années un des principaux produits du territoire que traverse ce chemin de fer. Durant plusieurs années antérieures à l'année 1942, la plus grande partie de ce bois de pulpe, ainsi qu'une quantité substantielle de billes pour bois de construction trouvèrent leur marché le plus profitable aux Etats-Unis. Ces produits furent, en conséquence, en grande partie transportés par camions jusqu'à Beecher Falls, situé sur la voie du Maine Central, et à d'autres endroits non desservis par cette ligne d'embranchement, pour être expédiés vers ce marché.

Antérieurement à l'année 1942, il était permis de transporter sans restrictions du bois de pulpe et autres produits forestiers au delà de la frontière internationale, mais en cette année, à cause des exigences de la guerre, certaines restrictions furent imposées en rapport avec l'exportation du bois de pulpe et des billes pour fin de construction. Un permis est requis pour l'exportation de ces produits, et ceux qui autrefois les exportaient sans restrictions n'ont le droit maintenant d'exporter qu'une certaine quotité de leurs expéditions antérieures. En l'année 1943, cette quotité représentait environ 50 ou 60 p.c. des expéditions normales de chaque intéressé. Pour l'année présente, la quotité a été de nouveau réduite.

Vu ces restrictions d'exportation, une quantité beaucoup plus grande de ces produits forestiers doit maintenant être acheminée vers les moulins canadiens. Plusieurs milliers de cordes de bois de pulpe et une grande quantité de bois de corde sont empilées à divers endroits, dans le voisinage de la ligne de chemin de fer que l'on projette d'abandonner, prêtes à être transporter. Au nom du comté de Compton et de plusieurs municipalités intéressées, il est soumis que si la ligne d'embranchement était exploitée, beaucoup de ces produits seraient

expédiés par le chemin de fer. Il est, en effet, allégué que l'exploitation de cette ligne est essentielle pour cette fin seulement.

Si la ligne était exploitée, il est probable qu'on y expédierait une plus grande quantité de bois de pulpe durant la continuation de la mise en vigueur des restrictions actuelles d'exportation. Je crois, toutefois, qu'il est raisonnable de supposer que les restrictions sur l'exportation sont des mesures d'une nature temporaire. Tel qu'indiqué ci-dessus, il n'y a eu que 10 wagons de bois de pulpe d'expédiés sur cette ligne d'embranchement du 1er janvier 1941 au 15 juin 1943.

Un problème qu'a à affronter le transport routier dans le territoire concerné est la difficulté d'obtenir des camions lorsque requis, ainsi que de nouveaux pneus et accessoires pour camions et autres automobiles. Il y a une grande pénurie de ces articles à cause des restrictions de guerre imposées sur leur fabrication pour l'usage civil. Les besoins de nos forces armées en ce qui concerne les véhicules-automobiles de toutes sortes ont été et sont encore considérables, et ont nécessairement la priorité. Le territoire affecté est passablement sillonné de routes, principales et secondaires, dont la meilleure et la plus importante est la route provinciale n° 27 qui va de Sawyerville, vers le sud, jusqu'à un point directement à l'ouest du village de St-Malo, de là, vers l'est, jusqu'au dit village de St-Malo, d'où elle continue dans la direction sud-est jusqu'à Paquetteville, et dans une direction sud-ouest jusqu'à un point sur la frontière internationale, quelque peu à l'ouest de Beecher Falls. Le plus grand inconvénient auquel doit faire face le transport routier est la présence de la neige en hiver. Dans le passé, seulement certaines parties des routes étaient déblayées de neige. Si l'exploitation de la ligne est discontinuée, il sera nécessaire d'entretenir plus de routes en hiver que si l'on continue de l'exploiter, ce qui imposera des frais additionnels à la province de Québec, aux municipalités et aussi, peut-être, à certains particuliers, vu que dans le passé chacun de ces intéressés a contribué aux frais d'entretien de certaines routes pour la circulation en hiver.

Si la requête est accordée, la distance d'un centre d'expédition ferroviaire sera substantiellement plus grande pour un nombre considérable de personnes, ce qui sera en soi une cause d'inconvénients et de pertes de temps. Pour la même raison, le coût de voiturier les produits aux points ferroviaires alternatifs sera augmenté. Les marchands qui font affaire dans les villages auront aussi à encourir des frais additionnels de transport pour l'obtention des marchandises qu'ils revendent aux cultivateurs et à d'autres clients. Ces frais additionnels seront nécessairement ajoutés au prix de vente des marchandises et payés par les consommateurs. Bien que ce montant ne soit pas énorme pour une personne en particulier, il constituera, néanmoins, une charge pécuniaire additionnelle à la collectivité.

Le procureur du conseil du comté de Compton a soulevé la question de l'effet possible de la législation fédérale, en vertu de laquelle des subsides ont été accordés à la compagnie de chemin de fer Hereford, en rapport avec la compétence de la Commission d'accorder la requête. Dans mon opinion, cette législation ne peut pas s'appliquer dans le cas présent vu les circonstances et conditions dans lesquelles la compagnie est devenue propriétaire de la ligne de chemin de fer, tel qu'expliqué ci-dessus.

L'article 165A, en vertu duquel la requête est soumise, fut incorporé sous forme d'amendement à la Loi des chemins de fer par le chapitre 47 des statuts fédéraux de 1933, et se lit comme suit:

165A. La Compagnie peut abandonner l'exploitation de toute ligne de chemin de fer avec l'approbation de la Commission, et nulle compagnie ne doit abandonner l'exploitation de quelque ligne de chemin de fer sans cette approbation.

Avant l'adoption de l'amendement de 1933, une compagnie de chemin de fer pouvait de son propre chef, abandonner une partie non rémunératrice de son réseau, à moins qu'il n'y eût certaines restrictions contre telle action, soit en vertu de la Loi qui la constituait en corporation, soit en vertu des termes de quelque contrat ou accord.

L'intention de l'amendement de 1933 à la Loi des chemins de fer était de s'assurer que les intérêts du public seraient au moins pris en considération avant qu'on ne discontinue l'exploitation d'une ligne de chemin de fer. En traitant de telles requêtes, la Commission a suivi la pratique que chaque requête doit être déterminée d'après les circonstances et les faits particuliers de chaque cas.

Dans la cause du Canadien-National v. Tweed (1935), 44 C.R.C. 53, la Commission a établi comme principe directeur que le litige dans chaque cas de demande d'abandon de ligne se résumait en une question de savoir "si la perte et les inconvénients causés au public par suite de l'abandon de la ligne l'emportent sur le fardeau qu'imposerait à la compagnie de chemin de fer la continuation de l'exploitation de ladite ligne".

Ce principe directeur a été depuis régulièrement suivi par la Commission lorsqu'elle a disposé de requêtes semblables et est, dans mon opinion, applicable dans la présente cause.

Il se peut que si la ligne était rétablie et remise en service, il y aurait une certaine amélioration temporaire en ce qui concerne le montant de trafic acheminé par chemin de fer à cause des restrictions, attribuables à l'état de guerre, imposées sur l'exportation du bois de pulpe et autres produits forestiers, et à cause des restrictions actuelles sur la fabrication des camions pour usage civil. Considérant le résultat de l'exploitation de la ligne durant une période de plusieurs années, et tenant bien compte du trafic futur possible, je ne crois pas que l'on puisse s'attendre avec beaucoup de confiance à une amélioration substantielle dans la situation.

L'évaluation du coût de rétablissement de cette ligne de chemin de fer est de \$55,000, avant qu'elle ne puisse être remise en opération. Ces frais considérables qu'aurait à encourir la compagnie constituent aussi, je crois, un facteur qui devrait être pris en considération.

La cause du comté et des municipalités à l'encontre de la requête nous a été entièrement et parfaitement présentée au moyen de la preuve soumise par plusieurs témoins et par l'exposé clair et l'argument habile des avocats du comté et de plusieurs municipalités intéressées. Nous avons eu aussi l'avantage de la présentation complète de la cause de la requérante par son avocat.

Après avoir très soigneusement considéré tout ce qui nous a été soumis, j'en suis arrivé à la conclusion que le fardeau qui serait imposé à la compagnie de chemin de fer par suite du rétablissement de la ligne et de la reprise de son exploitation dans le cas présent l'emporte sur les pertes et les inconvénients causés au public par suite de l'abandon de la ligne.

J'accorderais la requête. Une ordonnance sera rendue en conséquence.

Ottawa, le 14 août 1944.

J. A. CROSS,
Commissaire en chef.

J'agrée,

HUGH WARDROPE,
J. A. STONEMAN.

ORDER No. 65163

In the matter of the application of the Canadian Pacific Railway Company, hereinafter called the "Applicant Company", under Section 165A of the Railway Act and all other appropriate statutory provisions, for an Order granting it leave to abandon the operation of that portion of the Hereford Subdivision of its line of railway between a point just south of Sawyerville, mileage 7·5, and Malvina, mileage 22·8, a distance of 15·3 miles, in the Province of Quebec:

File No. 39309.23

WEDNESDAY, the 16th day of August, A.D. 1944.

J. A. CROSS, K.C., *Chief Commissioner.*

HUGH WARDROPE, *Assistant Chief Commissioner.*

J. A. STONEMAN, *Commissioner.*

Upon hearing the application at the City of Sherbrooke, Quebec, on June 21st and 22nd, 1944, in the presence of Counsel for the Applicant Company, the Compton County Council, and municipalities and localities along or adjacent to the railway, and what was alleged—

It is ordered: That the abandonment of operation of that portion of the Applicant Company's Hereford Subdivision between a point just south of Sawyerville, mileage 7·5, and Malvina, mileage 22·8, a distance of 15·3 miles, in the Province of Quebec, be, and it is hereby, approved.

J. A. CROSS,

Chief Commissioner.

ORDER No. 65183

In the matter of the application of the Great Northern Railway Company, under Section 330 of the Railway Act, for approval of its Standard Freight Tariff of Maximum Distance Tolls C.T.C. No. 2322, on file with the Board under file No. 31214.24.

THURSDAY, the 24th day of August, A.D. 1944.

HUGH WARDROPE, *Assistant Chief Commissioner.*

G. A. STONE, *Commissioner.*

Upon the report and recommendation of the Assistant Director, Traffic Department of the Board—

It is ordered: That the said Standard Freight Tariff of Maximum Distance Tolls of the Great Northern Railway Company, C.T.C. No. 2322, on file with the Board under file No. 31214.24, be, and it is hereby, approved; the said tariff, with a reference to this Order, to be published in at least two consecutive weekly issues of *The Canada Gazette*.

HUGH WARDROPE,

Assistant Chief Commissioner.

ACCIDENTS REPORTED TO THE OPERATING DEPARTMENT, BOARD OF TRANSPORT COMMISSIONERS FOR CANADA JULY, 1944

Railway Accidents	196 with 11 killed and 199 injured
Level Crossing Accidents.....	21 with 12 killed and 26 injured

Totals	217 with 23 killed and 225 injured
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	Killed	Injured
Passengers	2	43
Employees	3	143
Others	18	39
Totals	23	225

DETAILS OF ACCIDENTS AT HIGHWAY CROSSINGS

Accidents	K.	I.	
NEW BRUNSWICK			
1	1	—	Auto truck drove onto crossing in front of approaching train and was struck. Licence NB. X5245.
QUEBEC			
1	1	5	Automobile drove onto crossing in front of approaching train and was struck. Licence Que. T-4767.
1	—	1	Automobile drove onto crossing in front of approaching train and was struck. Licence Que. 98-471.
1	1	—	Cyclist rode his bicycle onto crossing in front of approaching train and was struck. Licence Que. 13121.
1	—	4	Automobile ran into side of train. Licence Que. 32-798.
1	—	1	Pedestrian endeavoured to cross track in front of approaching train and was struck.
ONTARIO			
1	—	1	Section motor car with lorry attached struck auto truck. Licence Ont. 87528-C.
1	—	1	Automobile drove onto crossing in front of approaching train and was struck. Licence Ont. 127-W-2.
1	—	1	Auto truck drove onto crossing in front of approaching train and was struck. Licence Ont. 76634-C.
1	1	—	Auto truck drove onto crossing in front of approaching train and was struck. Licence not given.
1	1	—	Auto truck drove onto crossing in front of approaching train and was struck. Licence Ont. 49392-C.
1	—	1	Pedestrian walked onto crossing in front of approaching train and was struck.
1	—	1	Cyclist rode bicycle onto crossing in front of approaching train and was struck. (Deaf and dumb.)
1	2	1	Automobile drove onto crossing in front of approaching train and was struck. Licence Ont. 6-R-990.
MANITOBA			
1	2	—	Automobile drove onto crossing in front of approaching train and was struck. Licence Min. 171-449.
1	—	1	Auto truck drove onto crossing in front of approaching train and was struck. Licence Man. T-9160.
SASKATCHEWAN			
1	—	1	Automobile drove onto crossing in front of approaching train and was struck. Licence Sask. 63144.
ALBERTA			
1	3	2	Automobile drove onto crossing in front of approaching train and was struck. Licence Alta. 36-204.
1	—	3	Automobile ran into side of train. Licence Alta. 87-142.
1	—	1	Gasoline truck drove onto crossing in front of approaching train and was struck. Licence Alta. PSV-5842.
BRITISH COLUMBIA			
1	—	1	Automobile ran into side of train. Licence B.C. 22180.

Of the 21 accidents at highway crossings, 14 occurred at unprotected crossings and 7 at protected crossings. Seventeen of the accidents occurred after sunrise and four after sunset.

August 29th, 1944.

SUMMARY OF ORDERS ISSUED BY THE BOARD

- 65163 Aug. 16—Approving abandonment of operation C.P.Ry's. Hereford Subd. between mileage 7·5 and 22·8.
- 65164 Aug. 15—Authorizing C.N.R. to construct extension to siding across side road between lots 36 and 37, Twp. of Sarnia, Ont.
- 65165 Aug. 17—Authorizing Canadian General Electric Co. Ltd. to use and operate its track over Lansdowne Avenue Subway, Toronto, Ont.
- 65166 Aug. 16—Rescinding Order No. 64209 showing proposed layout and details of freight shed and station at Bloomfield, N.B.
- 65167 Aug. 16—Authorizing C.N.R. to remove the station building at Floods, B.C.
- 65168 Aug. 17—Authorizing C.N.R. to open crossing of east and west road allowance between NW $\frac{1}{4}$ Sec. 20 and SW $\frac{1}{4}$ Sec. 29, Twp. 17, Rge. 12, WPM, over their Portage-Brandon Division, Man.
- 65169 Aug. 16—Authorizing that the crossing of Gilmore Road by C.N.Rys., Fort Erie, Ont., be protected by watchman for twenty-four hours daily.
- 65170 Aug. 18—Authorizing the National Harbours Board and the C.P.R. to construct an extension to track No. 12 Ballantyne Pier Yard, Vancouver Terminal Railway.
- 65171 Aug. 21—Declaring C.N.R. crossing second south of Ferintosh station, Alta., protected to Board's satisfaction.
- 65172 Aug. 18—Declaring C.P.R. crossing west of the station at Nevis, Alta., protected to Board's satisfaction.
- 65173 Aug. 21—Declaring C.P.R. crossing of Moore Street, Carleton Place, Ont., protected to Board's satisfaction.
- 65174 Aug. 21—Declaring C.P.R. crossing of 8th Street East, Calgary, Alta., protected to Board's satisfaction; speed limitation of ten miles per hour to be maintained.
- 65175 Aug. 21—Authorizing the Pere Marquette Railway Co. and the New York Central Railroad Co. to operate their trains through interlocking plant at crossing of said railways at McGregor, Ont., without first being brought to a stop.
- 65176 Aug. 22—Approving plan SD. 3320 showing changes to be made in the circuits controlling bell and wigwag installed at crossing of Yonge Street, Huntsville, Ont.
- 65177 Aug. 22—Approving under Maritime Freight Rates Act tolls published in tariffs filed by C.N.R. under Sec. 3.
- 65178 Aug. 22—Declaring C.P.R. crossing of the Township Road 1·32 miles east of Milverton, Ont., protected to Board's satisfaction.
- 65179 Aug. 23—Declaring C.N.R. crossing first just west of Humphrey Station, N.B., protected to Board's satisfaction.
- 65180 Aug. 23—Authorizing C.N.R. to install two flashing lights, etc., at crossing of Wellington Street, Aurora, Ont.
- 65181 Aug. 24—Declaring C.P.R. crossing of highway at mileage 97·1 Swift Current Subd., Sask., protected to Board's satisfaction.
- 65182 Aug. 24—Approving clearances of proposed building extension of Benedict-Proctor Mfg. Co., Ltd. on C.P.R. freight shed track, Trenton, Ont.
- 65183 Aug. 24—Approving Standard Freight Tariff of Maximum Distance Tolls of Great Northern Railway Company.
- 65184 Aug. 25—Authorizing C.N.R. to reconstruct bridge across Godfrey River, mileage 32·4 Aston Subd., Que.
- 65185 Aug. 26—Authorizing C.N.R. to construct spur across First Avenue, Second Avenue, the land in Block 3, and the lane in Block 11, Melville, Sask.
- 65186 Aug. 26—Authorizing C.P.R. to construct branch line of railway to serve St. Boniface Grain & Feed Company at St. Boniface, Man.
- 65187 Aug. 26—Approving clearances at siding serving Waite Amulet Mines Ltd. at mileage 2·5 Amulet Spur, Rouyn Subd., Que.
- 65188 Aug. 28—Authorizing C.N.R. to use and operate the bridges at certain mileages on their Drumheller Subd., Alta., District.
- 65189 Aug. 28—Declaring C.N.R. crossing of Arthur Street, Fort William, Ont., protected to Board's satisfaction; present speed limitation of ten miles per hour to be maintained.
- 65190 Aug. 26—Declaring Temiscouata Railway crossing of Victoria St., Edmundston, N.B., protected to Board's satisfaction.

- 65191 Aug. 28—Approving clearances at siding serving the Federal Wire and Cable Co. Ltd. at Guelph, Ont. (C.N.R.)
- 65192 Aug. 28—Approving clearances at siding serving the Consolidated Paper Corporation at St. Felicien, Que. (C.N.R.)
- 65193 Aug. 29—Declaring C.N.R. crossing of Highway No. 51, first public crossing just east of Les Etroits Station, P.Q., protected to Board's satisfaction.
- 65194 Aug. 28—Authorizing the C.N.R. to install two flashing light signals and one bell at crossing of 55th Avenue, Lachine, Que.
- 65195 Aug. 29—Authorizing C.N.R. to install two flashing light signals, etc., at crossing of Main Street, Palmerston, Ont.
- 65196 Aug. 31—Authorizing C.P.R. to install flashing light signals, etc., at the Champlain Bridge Crossing near Hull West, P.Q.
- 65197 Aug. 30—Authorizing C.N.R. to reconstruct bridge over Horseguard Creek, mileage 80.4 Brazeau Subd., Alta.
- 65198 Aug. 30—Authorizing C.P.R. to construct branch line of railway to serve Evans Products Limited at mileage 1.38 of the Westminster Branch of the Vancouver & Lulu Island Railway, Vancouver, B.C.
- 65199 Aug. 30—Declaring C.N.R. crossing of Cavan St., Port Hope, Ont., protected to Board's satisfaction.
- 65200 Aug. 30—Declaring C.N.R. crossing of Mont Carmel Highway first crossing just east of St. Philippe de Neri Station, Que., protected to Board's satisfaction.
- 65201 Aug. 30—Approving plan No. 430/23 A.5 showing power operated distant signals installed at interlocking plant at St. James Junction, near Winnipeg, Man.
- 65202 Aug. 30—Approving proposed relocation of pipe lines, etc., of McColl-Frontenac Oil Co. Ltd., near C.N.Rys. at Portage la Prairie, Man.
- 65203 Aug. 30—Authorizing Dept. of Public Works for British Columbia to construct level highway crossing over tracks of Esquimalt & Nanaimo Ry. Co., at Mile 4.27 Cowichan Lake Subd., B.C.
- 65204 Aug. 30—Authorizing C.P.R. to remove station agent at Lardeau, B.C.; caretaker to be appointed.
- 65205 Aug. 30—Authorizing C.N.R. to construct east and west legs of wye track across highway at Albert, N.B.
- 65206 Aug. 30—Declaring C.P.R. crossing of highway just north of Craighurst Station, Ont., protected to Board's satisfaction.
- 65207 Aug. 30—Authorizing C.P.R. to carry out changes to interlocking plant at crossing of its tracks with C.N.Rys. tracks at Lennoxville, Que., Mileage 65.9 Megantic Subd.
- 65208 Aug. 30—Declaring C.P.R. crossing of highway third crossing west of Shoal Lake Station, Man., protected to Board's satisfaction.

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The Board of Transport Commissioners for Canada

Judgments, Orders, Regulations and Rulings

Vol. XXXIV

Ottawa, October 1, 1944

No. 13

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Application of the Town of Gladstone, Manitoba, for the installation of protection at the crossing of Dennis Street, in the said Town of Gladstone (No. 4 Provincial Highway), by the Canadian National Railways and Canadian Pacific Railway Company, and consideration of the apportionment of the cost of construction and maintenance of such protection.

File No. 27365.71

ORAL JUDGMENT

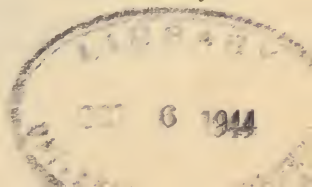
CROSS, *Chief Commissioner*, concurred in by Mr. Commissioner STONEMAN and Mr. Commissioner MACPHERSON.

This is an application of the Town of Gladstone, in the Province of Manitoba, for the installation of protection at the crossing of Dennis Street, in the said Town of Gladstone (No. 4 Provincial Highway) by the Canadian National Railways and Canadian Pacific Railway Company, and consideration of the apportionment of the cost of construction and maintenance of such protection.

The application was heard at the City of Portage la Prairie, Man., on Monday, August 21, 1944. Mr. R. McAskill, Mayor, Mr. J. D. Rogers and Mr. J. Paxton, Councillors of the Town of Gladstone, appeared for the Town; Mr. L. J. C. Elliott for the Department of Public Works of the Province of Manitoba, Mr. I. D. Sinclair for the Canadian Pacific Railway Company; and Mr. A. K. Dysart for Canadian National Railways.

Dennis Street in the Town of Gladstone, at the point of the crossing of same by both Railways, forms part of No. 4 Provincial Highway and is under the jurisdiction of the Province of Manitoba. The street at the crossing is senior to both the Canadian Pacific Railway and Canadian National Railways.

The lines of vision at the crossing are fairly good. Advance warning signs are already erected on the highway to warn users of the street or highway of the approach to a railway crossing at grade level. There is no record of any accident at the crossing.



On behalf of the Province of Manitoba it is submitted that additional protection in the form of flashing lights or other automatic mechanical device is not necessary. Counsel for each of the Railways contends that additional protection is not necessary. Counsel for the Province of Manitoba also pointed out that it is the intention of the Province to later relocate Highway No. 4 at the point in question which would probably have the result of eliminating the crossing.

For the Town it was intimated that if stop signs were erected at the Dennis Street Crossing this would fairly well meet the situation. Upon request of the Town the Province is prepared to erect stop signs, as suggested by the Town.

Upon consideration of all that was placed before us I do not think that the crossing can be said to be dangerous to the public. There is, of course, an element of danger at all railway crossings at grade level.

It is beyond the jurisdiction of the Board to direct that stop signs be erected by the Province on its highway. This is, however, a matter which I feel can safely be left to the Town and the Province to work out between themselves and put into effect.

So far as this Board is concerned, the application will be dismissed.

Dated August 21, 1944.

ORDER No. 65251

In the matter of the application of the Town of Gladstone, Manitoba, for the installation of protection at the crossing of Dennis Street (Provincial Highway No. 4) by the Canadian National Railways and the Canadian Pacific Railway; and for consideration of the apportionment of the cost of construction and maintenance of such protection.

File 27365.71

FRIDAY, the 15th day of September, A.D. 1944.

J. A. CROSS, K.C., *Chief Commissioner.*

J. A. STONEMAN, *Commissioner.*

F. M. MACPHERSON, *Commissioner.*

Upon hearing the application at the sittings of the Board held at Portage la Prairie, Manitoba, on August 21, 1944, in the presence of Counsel for and representatives of the Town of Gladstone, the Province of Manitoba, the Canadian Pacific Railway Company, and the Canadian National Railways, and what was alleged—

It is ordered: That the application be, and it is hereby, dismissed.

J. A. CROSS,
Chief Commissioner.

ORDER No. 65214

In the matter of the application of Yukon Southern Air Transport Limited, hereinafter called the "Applicant", under Section 13 of The Transport Act, 1938, for a licence to transport passengers and/or goods by air between Fort St. John, Red Fern Lake, Blue Lake, Tuchodi Lake, Fort Nelson, and Nelson Forks, in the Province of British Columbia; and Liard, South Nahanni, and Simpson, in the Northwest Territories.

File No. 42007.21.5

TUESDAY, the 5th day of September, A.D. 1944.

HUGH WARDROPE, *Assistant Chief Commissioner.*

G. A. STONE, *Commissioner.*

Whereas, in pursuance of Order No. 64039, dated September 30, 1943, a licence was issued to the Applicant in renewal of Licence Number C.T.C. (A.T.) 71 for the period of one year commencing on October 15, 1943—

Therefore it is ordered: That a licence be issued to the Applicant for the period of one year commencing on October 15, 1944, in renewal of the said Licence Number C.T.C. (A.T.) 71.

HUGH WARDROPE,

Assistant Chief Commissioner.

ORDER No. 65216

In the matter of the application of Yukon Southern Air Transport Limited, hereinafter called the "Applicant," under Section 13 of The Transport Act, 1938, for a licence to transport passengers and/or goods by air between Edmonton, Grande Prairie, Peace River, in the Province of Alberta; Dawson Creek, Fort St. John, Fort Nelson, Lower Post, in the Province of British Columbia; and Watson Lake, Teslin, Whitehorse, in Yukon Territory.

File No. 42007.21.2

TUESDAY, the 5th day of September, A.D. 1944.

HUGH WARDROPE, *Assistant Chief Commissioner.*

G. A. STONE, *Commissioner.*

Whereas, in pursuance of Order No. 64037, dated September 30, 1943, a licence was issued to the Applicant in renewal of Licence Number C.T.C. (A.T.) 68 for the period of one year commencing on October 15, 1943—

Therefore it is ordered: That a licence be issued to the Applicant for the period of one year commencing on October 15, 1944, in renewal of the said Licence Number C.T.C. (A.T.) 68.

HUGH WARDROPE,

Assistant Chief Commissioner.

ORDER No. 65221

In the matter of the application of Arrow Airways Limited, hereinafter called the "Applicant", under Section 13 of The Transport Act, 1938, for a licence to transport passengers and/or goods by air between Flin Flon, in the Province of Manitoba; Island Falls, South End, in the Province of Saskatchewan; and Brochet, in the Province of Manitoba.

File No. 42007.6.4

THURSDAY, the 7th day of September, A.D. 1944.

HUGH WARDROPE, *Assistant Chief Commissioner.*

G. A. STONE, *Commissioner.*

Whereas, in pursuance of Order No. 64060, dated October 6, 1943, a licence was issued to the Applicant in renewal of Licence Number C.T.C. (A.T.) 53 for the period of one year commencing on October 18, 1943—

Therefore it is ordered: That a licence be issued to the Applicant for the period of one year commencing on October 18, 1944, in renewal of the said Licence Number C.T.C. (A.T.) 53.

HUGH WARDROPE,

Assistant Chief Commissioner.

ORDER No. 65222

In the matter of the application of Yukon Southern Air Transport Limited, hereinafter called the "Applicant", under Section 13 of The Transport Act, 1938, for a licence to transport passengers and/or goods by air between Vancouver, Williams Lake, Prince George, Fort St. John, Fort Nelson, and Lower Post, in the Province of British Columbia; and Watson Lake, Teslin, and Whitehorse, in Yukon Territory.

File No. 42007.21

THURSDAY, the 7th day of September, A.D. 1944.

HUGH WARDROPE, *Assistant Chief Commissioner.*

G. A. STONE, *Commissioner.*

Whereas, in pursuance of Order No. 64036, dated September 30, 1943, a licence was issued to the Applicant in renewal of Licence Number C.T.C. (A.T.) 67 for the period of one year commencing on October 15, 1943—

Therefore it is ordered: That a licence be issued to the Applicant for the period of one year commencing on October 15, 1944, in renewal of the said Licence Number C.T.C. (A.T.) 67.

HUGH WARDROPE,

Assistant Chief Commissioner.

ORDER No. 65223

In the matter of the application of Yukon Southern Air Transport Limited, hereinafter called the "Applicant", under Section 13 of The Transport Act, 1938, for a licence to transport passengers and/or goods by air between Prince George, Fort St. James, Manson Creek, Germansen Landing, Takla Landing, Uslika Lake, Bear Lake, Aiken Lake, McConnell Creek, Thutade Lake, and Two Brothers Lake, all in the Province of British Columbia.

File No. 42007.21.3

THURSDAY, the 7th day of September, A.D. 1944.

HUGH WARDROPE, *Assistant Chief Commissioner.*G. A. STONE, *Commissioner.*

Whereas, in pursuance of Order No. 64038, dated September 30, 1943, a licence was issued to the Applicant in renewal of Licence Number C.T.C. (A.T.) 69 for the period of one year commencing on October 15, 1943—

Therefore it is ordered: That a licence be issued to the Applicant for the period of one year commencing on October 15, 1944, in renewal of the said Licence Number C.T.C. (A.T.) 69.

HUGH WARDROPE,

Assistant Chief Commissioner.

ORDER No. 65247

In the matter of the application of the Canadian National Railways, hereinafter called the "Applicants," for permission to amend their Tariff C.T.C. No. E-3886 on short notice.

File No. 27612.290

MONDAY, the 18th day of September, A.D. 1944.

J. A. CROSS, K.C., *Chief Commissioner.*G. A. STONE, *Commissioner.*F. M. MACPHERSON, *Commissioner.*

Whereas the Applicants advise that, through error in their Tariff C.T.C. No. E-3886, issued to become effective September 18, 1944, Imperoyal (Dartmouth), Nova Scotia, is shown as taking the same rates as Halifax, Nova Scotia, although it was intended to provide for the application of Halifax rates to Imperoyal on petroleum and petroleum products only, and they desire to make correction on short notice—

It is ordered: That the Applicants be, and they are hereby, permitted to amend their Tariff C.T.C. No. E-3886, effective on one day's notice, to correct the said error.

J. A. CROSS,

Chief Commissioner.

SUMMARY OF ORDERS ISSUED BY THE BOARD

- 65209 Sept. 5—Authorizing C.P.R. to construct crossover track to serve K. A. Powell at Fort William, Ont.
- 65210 Aug. 31—Authorizing New York Central Railroad Co. to install flashing light signals at crossing of White Street, St. Thomas, Ont.
- 65211 Sept. 1—Authorizing Dept. of Highways Province of Ont. to construct public highway crossing over C.N.R. tracks just west of St. Cloud Station, Ont.
- 65212 Sept. 5—Authorizing C.P.R. to construct branch line of railway to serve La Societe Co-operative Agricole de Rigaud, Village of Rigaud, County of Vaudreuil, Que.
- 65213 Sept. 5—Declaring C.N.R. crossing of Sudbury-Capreol Highway first public crossing north of Hamner Station, Ont., protected to Board's satisfaction.
- 65214 Sept. 5—Authorizing issuing of Licence to Yukon Southern Air Transport Limited, in renewal of Licence No. C.T.C. (A.T.) 71.
- 65215 Sept. 5—Approving under Maritime Freight Rates Act tolls published in tariffs filed by C.N.R. under Sec. 3.
- 65216 Sept. 5—Authorizing issuing of Licence to Yukon Southern Air Transport Limited, in renewal of Licence No. C.T.C. (A.T.) 68.
- 65217 Sept. 5—Authorizing C.P.R. to carry out changes at interlocking plant at its crossing with C.N.Rys. near St. Thomas, Ont.
- 65218 Sept. 5—Authorizing C.P.R. to construct branch line of railway to serve Cranbrook Sawmills Ltd., at Cranbrook, B.C.
- 65219 Sept. 6—Authorizing C.P.R. to install two manually controlled flashing light signals and bell at crossing of George Street, Peterborough, Ont.
- 65220 Sept. 6—Declaring Pere Marquette Railway crossing of Richmond Street one mile south of Walkerville Station, Windsor, Ont., protected to Board's satisfaction; speed limitation of ten miles per hour to be maintained.
- 65221 Sept. 7—Authorizing issuing of Licence to Arrow Airways Limited, in renewal of Licence No. C.T.C. (A.T.) 53.
- 65222 Sept. 7—Authorizing issuing of Licence to Yukon Southern Air Transport Limited in renewal of Licence No. C.T.C. (A.T.) 67.
- 65223 Sept. 7—Authorizing issuing of Licence to Yukon Southern Air Transport Limited, in renewal of Licence No. C.T.C. (A.T.) 69.
- 65224 Sept. 7—Approving location of pipe lines, etc., of Imperial Oil Ltd., near Dominion Atlantic Railway Co's tracks at Weymouth, N.S.
- 65225 Sept. 7—Approving location of pipe lines, etc., of Imperial Oil Ltd., near C.N.Rys. tracks at Chester, N.S.
- 65226 Sept. 7—Approving location of pipe lines, etc., of Imperial Oil Ltd., near C.P.R. Co's tracks at Florenceville, N.B.
- 65227 Sept. 7—Authorizing C.N.R. to operate the bridges at certain mileages on their Fraser Subd., British Columbia District.
- 65228 Sept. 7—Authorizing C.P.R. to construct branch line of railway to serve Dixie Growers Co-operative Ltd., south of Dundas Street, Twp. of Toronto, County of Peel, Ont.
- 65229 Sept. 7—Authorizing Corp. of the Township of Albion, Ont., to reconstruct western approach to crossing of highway and C.N.R. in Lot 26, con. 10, Twp. of Albion, Ont., mileage 51-67 Milton Subd., Ont.
- 65230 Sept. 7—Declaring C.P.R. crossing of Pine Street, Trail, B.C., protected to Board's satisfaction; present speed limitation of five miles per hour to be maintained.
- 65231 Sept. 7—Authorizing the Corp. of the County of St. Jean, Que., to construct Montee Samoisette Road across C.N.Rys. at mileage 29-22 Rouses Point Subd., Que.
- 65232 Sept. 8—Approving clearances at coal conveying equipment of McKinnon Fuels, Limited, on siding at Gerrard Street East, Toronto, Ont.
- 65233 Sept. 8—Declaring C.P.R. crossing of highway at mileage 20-75 Rossland Subd., near Annable, B.C., protected to Board's satisfaction.
- 65234 Sept. 11—Authorizing C.P.R. to construct branch line of railway to serve Martin Feed Mills Ltd., in Lot No. 60, Twp. of Woolwich, County of Waterloo, Ont.

- 65235 Sept. 11—Authorizing C.P.R. to remove cap on return fences at Mile 38.8 Galt Subd., Twp. of Nassagaweya, Ont., and Mile 39.9 Galt Subd., Twp. of Nassagaweya, Ont.
- 65236 Sept. 11—Approving location of pipe lines, etc., of Canadian Oil Companies Ltd., near C.N.Rys. at Moose Jaw, Sask.
- 65237 Sept. 12—Approving plan dated July 7, 1944, showing interlocking plant at crossing of C.P.R. with C.N.R. at Woodman, Man.
- 65238 Sept. 13—Extending time within which to install flashing light signals, etc., at crossing of Cawthra Road, Twp. of Toronto, Ont. (C.N.R.).
- 65239 Sept. 14—Authorizing Dept. of Public Works for Prov. of B.C. to construct a level highway crossing over C.P.R. tracks, mileage 71.74 west of Kamloops, and over Kettle Valley Railway Co at mileage 0.90 Spences Bridge, B.C.
- 65240 Sept. 13—Amending Order No. 65041 dated Sept. 30, 1943, authorizing C.N.R. to operate trains on main line over diamond crossing near swing span of Lachine Canal bridge between Pointe St. Charles and St. Henri, Montreal, Que.
- 65241 Sept. 14—Approving under Maritime Freight Rates Act tolls published in tariffs filed by Temiscouata Railway Co. under Sect. 3.
- 65242 Sept. 14—Authorizing Dept. of Roads, Que., to widen crossing of Route No. 3 at mileage 79.2 Sorel Subd., Parish of St. Jean Baptiste de Nicolet, County of Nicolet, Que.
- 65243 Sept. 14—Extending time within which to install flashing light signals and bell at crossing of St. Germain Street, Rimouski, Que. (C.N.R.).
- 65244 Sept. 14—Authorizing C.P.R. to construct, branch line of railway to serve Long Brothers Sawmills at Merritt, B.C.
- 65245 Sept. 14—Declaring Toronto Hamilton & Buffalo Ry. crossing of Beach Road, Hamilton, Ont. protected to Board's satisfaction; present speed limitation of fifteen miles per hour to be maintained.
- 65246 Sept. 16—Declaring C.N.R. crossing of highway just east of Wilsonvale Station, Que., protected to Board's satisfaction.
- 65247 Sept. 18—Authorizing C.N.R. to amend their Tariff C.T.C. No. E-3886 on one day's notice, to correct an error
- 65248 Sept. 18—Declaring C.N.R. crossing of Ste. Anne Street, Chicoutimi, Que., protected to Board's satisfaction; speed limitation of ten miles per hour to be maintained.
- 65249 Sept. 15—Authorizing Dept. of Highways for Ontario to construct highway crossing over tracks of C.P.R. in Lot 7, Con. IV, Twp. of Waters, Dist. of Sudbury, Ont.
- 65250 Sept. 15—Approving location of pipe lines, etc., of The British American Oil Co. Limited near Northern Alberta Railways at Grimshaw, Alta.
- 65251 Sept. 15—Dismissing application of Town of Gladstone, Man., for protection at crossing of Dennis Street by C.N.R. and C.P.R.
- 65252 Sept. 15—Declaring C.N.R. crossing of highway first crossing west of Finnie Station, Sask., protected to Board's satisfaction.
- 65253 Sept. 18—Dismissing application of Blucher-Co-operative Association Ltd., Blucher, Sask., for Order directing C.P.R. to appoint permanent station agent at Blucher Station, Sask.
- 65254 Sept. 18—Extending time within which to install two flashing light signals and one bell at each crossing of Highway No. 15 immediately south of Carleton Place Station, Ont.
- 65255 Sept. 19—Declaring C.P.R. crossing of highway 1.85 miles south of Woodbridge, Ont., protected to Board's satisfaction.
- 65256 Sept. 19—Approving under Maritime Freight Rates Act tolls published in tariffs filed by C.N.R. under Sec. 3.
- 65257 Sept. 19—Approving relocation of pipe lines, etc., of Imperial Oil Ltd., near tracks of C.N.Rys. at Flaxcombe, Sask.
- 65258 Sept. 20—Apportioning cost of maintenance of crossing over the tracks of C.N.Rys. at 125th Ave., Edmonton, Alta.

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The Board of Transport Commissioners for Canada

Judgments, Orders, Regulations and Rulings

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No. 14

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Application of Blucher Co-operative Association Limited, of Blucher, Sask., for an Order directing the Canadian Pacific Railway Company to appoint and continue a permanent station agent at Blucher Station, Sask., in lieu of the appointment and maintenance of a station agent at said point from the 1st day of September until the 1st day of March, and a caretaker from the 1st day of March until the 31st day of August in each year as provided for in Board's Order No. 62071, dated the 2nd day of April, 1942.

File No. 10875

ORAL JUDGMENT

CROSS, CHIEF COMMISSIONER:

This is an application of the Blucher Co-operative Association Limited, of Blucher, Saskatchewan, for an order directing the Canadian Pacific Railway Company to appoint and continue a permanent station agent at Blucher station, Saskatchewan, in lieu of the appointment and maintenance of a station agent at the said point from the 1st day of September until the 1st day of March, and a caretaker from the 1st day of March until the 31st day of August in each succeeding year, as provided for in Board's Order No. 62071, dated the 2nd day of April, 1942.

This application was heard at the City of Saskatoon to-day, Wednesday, August 23, 1944. The Blucher Co-operative Association Limited, the applicant, and the community of Blucher were represented by Mr. M. Baldwin, Mr. W. Cummins, Mr. C. J. McLaughlin and Mr. James Aitkens. Mr. I. D. Sinclair appeared for the Canadian Pacific Railway Company, hereafter referred to as the Railway Company.

The hamlet of Blucher has 46 residents and the district of Blucher comprises some 262 people. It would probably be helpful to make some mention of the past and present situation at Blucher station as an agency point on the line of the Railway Company.

On the application of the Railway Company, the Board, by Order No. 48132, dated the 15th day of February, 1932, ordered that the applicant company, that is the Railway Company, be and it is hereby, granted leave, until further ordered, to remove its agent at Blucher station, in the Province of Saskatchewan, subject to and upon the condition that a caretaker be appointed to see that the station building is kept clean and, when necessary, heated and lighted for the accommodation of passengers on the arrival and departure of trains, and to take care of less than carload freight and express shipments.

On an application made in 1936, the Board directed the Railway Company to appoint a temporary agent at Blucher station. The appointment was accordingly made, effective on September 1, 1936, and continued until March, 1937. On April 10, 1937, the Board directed the Railway Company to supply a regular agent at Blucher station between September 1 and March 1 of each succeeding year and that for the remainder of the year a caretaker should be installed with the usual duties. Owing to poor crop conditions in the district, the Railway Company was, by consent of the interested parties at Blucher, excused from maintaining an agent at Blucher station between September 1, 1937, and March 1, 1938, on condition that the services of a caretaker be maintained for such period. It appears that an agent was again appointed on September 1, 1939, and his services continued until about the end of March, 1942.

The necessity of a permanent station agent as Blucher station was again fully reviewed by the Board in March, 1942. This review included an investigation, by a district inspector of the Board, at Blucher, and a report in writing by the inspector to the Board of the result of his enquiry.

On April 2, 1942, the Board issued an Order, No. 62071, whereby it was ordered that the Canadian Pacific Railway Company be, and it is hereby, directed to appoint and maintain a station agent at Blucher, Saskatchewan, from the 1st day of September until the 1st day of March in the following year and a caretaker from the 1st day of March until the 31st day of August in the following year. This is how the matter stands at the present time.

A summary of the gross earnings of the railway company at Blucher station for the years 1941, 1942, 1943 and from January until July 31, 1944, is as follows:—

SUMMARY OF GROSS EARNINGS BLUCHER

Year	Freight Received				Freight Forwarded				Tickets	Express	Total
	CL	Revenue	LCL	Revenue	CL	Revenue	LCL	Revenue			
1941	29	2,505.18	87	174.66	64	10,992.43	13	66.37	1,049.44	993.69	15,781.77
1942	30	2,405.00	58	171.83	58	12,057.09	9	20.76	598.13	778.70	16,031.51
1943	26	2,319.17	107	321.94	147	34,946.24	18	186.48	725.90	882.74	39,382.47
1944											
Jan. to											
July 31 .	8	1,194.78	74	127.99	105	30,902.43	4	50.53	171.85	614.87	33,062.45

The summary to which reference has been made, and put in as part of Exhibit No. 1, is supported by details filed by the Railway Company showing monthly earnings, covering the period 1941, 1942, 1943 and from January 1 to July 31, 1944.

From these figures it will be seen that the earnings for 1943 and for the first seven months of 1944, show a very substantial increase in gross earnings over each of the two years 1941 and 1942. This increase in earnings was, however, largely due to outward carload freight shipments, mainly of grain, which would not particularly require the services of an agent to handle.

The main points urged on behalf of the Blucher Co-operative Association Limited in support of its application are as follows: Inconvenience in connection with the transaction of all classes of business necessary to be done by the people of the community with the Railway Company and, more particularly, in connection with the receipt of perishable goods, the receipt of goods shipped by express C.O.D., the despatch and receipt of telegrams; the ascertaining of

time of arrival of trains on occasions when trains are late. It was also strongly urged that if an agent were appointed on a full year to year basis instead of only six months of the year as at present, these difficulties would be removed to the great advantage of the community and to the benefit of the Railway Company as well.

On behalf of the applicant, the value of a full-time agent to the community life of the district was also stressed. It is also further urged on behalf of the applicant that the earnings at the station fully justify the appointment of a full-time agent.

Blucher is about 25 miles by rail and about 30 miles by road from the City of Saskatoon. During the six months' period that there is no agent at Blucher, the closest open agency point on the railway is Elstow 6.6 miles by rail and 7 miles or a little more by road.

The Railway Company, in opposition to the application, while admitting that the absence of an agent at Blucher for six months does cause some inconvenience during that period to shippers and others who have occasion to do business with the railway, strongly urges that this inconvenience does not go to the extent of creating any undue hardship to the community of Blucher. On behalf of the Railway Company, considerable stress is placed upon the scarcity of agents and telegraphers in the railway district which includes Blucher and, on the Railway system in general. This condition has arisen out of the war which has resulted in manpower shortages not only for the Railway Company, but for others as well.

The Railway Company, in its answer to the application stated, in part, that there were 30 agents and operators on the Saskatoon Division who could not be relieved for vacations last year, and 75 others on the Regina-Moose Jaw division, through the lack of telegraphers. Even though their position in that respect was not critical, the officials of the Railway Company did not think that the amount of traffic would warrant Blucher as an open-agency the year round.

At the hearing to-day we were given some further figures by the Railway Company in respect to the scarcity of agents on the Saskatoon division, of which Blucher forms a part. Out of 127 open-agencies, 78 have not had holidays or relief this year, as at August, 1944. There were also 43 agents and operators on the division who did not get a holiday at all during the year 1943.

What is before us in this respect clearly shows the problem which the Railway Company is facing in connection with its supply of agents and telegraph operators. While the situation in this respect is rather acute, it is, of course, known to everyone that it is not only the railways that have problems of scarcity of help.

The service of the present caretaker at Blucher appears to be at least reasonably satisfactory to the portion of the public concerned and also satisfactory to those having occasion to do business with him as representing the Railway Company. It is quite true that some inconvenience is occasioned to the people of Blucher and the district by the fact that the agent is on duty only six months of the year. The situation would be helped and improved by the appointment of a full-time agent. I think that is obvious to everyone. While there is inconvenience we do not think that the hardship thereby imposed is what might be termed as undue or excessive hardship. The desire of the community to have a full-time agent is quite understood.

It also appeared from the evidence given on behalf of the applicant that it was feared that the present order which requires the appointment of an agent for six months might even be rescinded and leave the community without an agent. It is clear from what was stated on behalf of the Railway Company that it is not in the contemplation of the Railway Company to attempt to effect any change or to make any application which may result in the removal of the agent at Blucher between the period September 1st and March 1st. In any

event, no step in that direction could be taken without an application to this Board and, of course, upon notice to the people interested at Blucher.

As we have already pointed out there has been a substantial increase in the gross earnings at Blucher station during the year 1943 and during the year 1944 up to the 31st day of July. On the ground of gross earnings at the station alone, a good deal could be said in favour of the application and of the appointment of a full time agent, but we have to consider also the problem which the Railway Company is facing in respect to the shortage of Railway Agents and telegraph operators. The existence of a like situation throughout many other portions of the Canadian Pacific Railway and other railways is well known to the Board. This is one situation of which we feel compelled to take cognizance in coming to a conclusion on the application now before us.

Upon consideration of all that has been placed before us we have reached the conclusion that the application should be dismissed, but with leave to the applicants or other interested parties in Blucher district to apply to the Board again if they so desire under changed conditions and particularly when the situation in respect to the availability of agents and telegraphers has improved.

It is scarcely necessary to say that, in the meantime, the existing order of the Board requiring the company to appoint an agent at Blucher for the period from the 1st of September in one year until the 1st of March in the next year remains undisturbed. Both my colleagues, Mr. Commissioner Stoneman and Mr. Commissioner MacPherson have indicated concurrence with the decision which I have just rendered.

ORDER No. 65253

In the matter of the application of Blucher-Co-operative Association Limited, of Blucher, Saskatchewan, for an Order directing the Canadian Pacific Railway Company to appoint and continue a permanent station agent at Blucher Station, Saskatchewan, in lieu of the appointment and maintenance of a station agent at said point from the 1st day of September until the 1st day of March, and a caretaker from the 1st day of March until the 31st day of August in each year, as provided for in the Order of the Board No. 62071, dated the 2nd day of April, 1942:

File No. 10875

MONDAY, the 18th day of September, A.D. 1944.

J. A. CROSS, K.C., *Chief Commissioner.*

J. A. STONEMAN, *Commissioner.*

F. M. MACPHERSON, *Commissioner.*

Upon hearing the application at the sittings of the Board held at Saskatoon, Saskatchewan, on August 23rd, 1944, in the presence of Counsel for and representatives of the Town of Blucher and surrounding territory and the Railway Company, and what was alleged,—

It is ordered: That the application be, and it is hereby, dismissed.

J. A. CROSS,
Chief Commissioner.

Application of the Western Power Company of Canada Limited, Vancouver, B.C., under Section 165A of the Railway Act, for authority to abandon the operation of a line of railway from the Company's works on the Stave River, B.C., to a point on the main line of the Canadian Pacific Railway near Ruskin, B.C., a distance of 6.21 miles.

File No. 44022

Heard at Vancouver, B.C., Monday, August 28, 1944

ORAL JUDGMENT

CROSS, CHIEF COMMISSIONER:

This is an application of the Western Power Company of Canada Limited under section 165A of the Railway Act and all other appropriate statutory provisions for an order granting it leave to abandon operation of the Stave Falls Railway, located within the municipalities of Maple Ridge and Mission in the Province of British Columbia and involving a total trackage of 7.80 miles, including not only the main line but the sidings as well.

The application was heard at the city of Vancouver on this date, namely, Monday, August 28, 1944. Mr. W. A. Riddell appeared for the applicant and Mr. J. A. Wright appeared for the Canadian Pacific Railway Company. In opposition to the application, no one has appeared for the Province of British Columbia or for the municipalities of Maple Ridge or Mission, although the parties were served with notice of the application and also with a notice of hearing.

The line was constructed under a Dominion of Canada railway charter by the former Western Canada Power Company Limited, between 1910 and 1912, from a siding on the Canadian Pacific Railway Company's main line located immediately west of Ruskin station in the municipality of Maple Ridge, northerly a distance of 5.8 miles along the right bank of the Stave river and through a section of the municipality of Mission to the hydro electric power development at Stave Falls, then under construction by the Power Company. The purpose of the railway was to provide transportation of men and material to the power site and construction camp at Stave Falls.

Shortly after the completion of the original line of railway, a new company called the Western Power Company of Canada Limited, the present applicant, took over the railway with the other assets of the former company. The legislation relating to both of the companies mentioned, so far as the line of railway is concerned, will be found in Chapter 75 of the Statutes of Canada, 1910, being an Act respecting the Western Canada Power Company Limited, and Chapter 75 of the Statutes of Canada, 1918, being an Act to enable the Western Power Company Limited to own and operate the railway of the Western Power Company of Canada Limited.

In 1929 construction was commenced on a new power site on the lower reaches of the Stave river, known as the Ruskin development. This necessitated the relocation of about 3.47 miles of the Stave Falls Railway, commencing 1.82 miles from Ruskin (connection with the Canadian Pacific Railway), and finishing 0.56 miles from Stave Falls. The relocation of the line was done on the authority of the Board of Railway Commissioners for Canada and added 0.35 miles to the line, which is now 6.21 miles between termini.

Prior to 1921, the Stave Falls Railway was operated with steam locomotives. Subsequently it was electrified with 550 volts D.C. supplied by trolley and span wire overhead construction on wooden poles.

Up to a few months ago there was one small mill operating, served by the Stave Falls Railway and located approximately midway between Ruskin and the Ruskin power development. This last remaining mill which utilized the

Stave Falls Railway for the shipment of lumber products, has since ceased its operations in the area, has dismantled all machinery from its mill site and has moved out of the area. Since the abandonment of this mill no freight whatever has been handled over the railway, unless it be the one carload of material that was mentioned by Mr. Ernest Arnott in his evidence before us to-day.

The present railway is a single track line with ten sidings and spurs, involving a mileage as follows: Main track, 6.21 miles; sidings and spurs, 1.59 miles; total mileage, 7.80 miles.

There are no stations on the line excepting the terminals, namely Ruskin at the southerly end and Stave Falls at the northerly end. The Company's Ruskin dam development is located midway between these two termini.

A good public highway parallels the Stave Falls Railway throughout its length. In some places it is only a few hundred feet away from the railway. Heavy trucking for some years past has been performed over this highway. Except for the one mill which the Stave Falls Railway served up to the time of the mill's closure and abandonment in April of this year, practically all other traffic, both freight and passenger, has been handled over the public vehicular highway. No train movements of any kind are now taking place on the railway except for the transportation of track maintenance men and materials in connection with a small amount of work being done on the railway awaiting the disposition of the Board of Transport Commissioners for Canada of the present application.

The Stave Falls Railway is constructed through a narrow valley and, as indicated earlier, parallels the Stave River between Ruskin and Stave Falls. The line now existing was constructed for the transportation of men and materials in connection with the construction of the dam for hydro electric purposes. So far as the Power Company is concerned, the railway has long since served its purpose.

The Stave Falls Railway has been operated at a substantial loss, as will be seen from the statement set out herein of its gross revenues and expenses in connection with the line for three years ending December 31, 1943. The statement is as follows:—

<i>Earnings</i>	Year to 31st December, 1941	Year to 31st December, 1942	Year to 31st December, 1943
Passenger	\$ 4.00	\$ 9.50	\$ 25.40
Freight	7,242.48	5,248.38	5,429.61
Total earnings	\$ 7,246.48	\$ 5,257.88	\$ 5,455.01
<i>Expenses</i>			
Maintenance of Ways and Structures	3,379.14	5,384.96	7,644.29
Maintenance of Equipment	178.41	43.95	265.31
Traffic and Transportation	2,714.09	2,641.13	3,054.04
General and Miscellaneous	134.33	139.00	180.00
Total Expenses	\$ 6,405.97	\$ 8,209.04	\$11,134.64
Depreciation	13,960.57	13,921.12	14,197.83
Total Expenses and Depreciation	\$20,366.54	\$22,130.16	\$25,332.47
Loss	\$13,120.06	\$16,872.28	\$19,877.46

It should be noted, however, that there is included in the statement of Revenue and Expenses to which reference has been made an amount for depreciation of the property of the applicant company as follows: For the year 1941, \$13,960.57; for the year 1942, \$13,921.12, and for the year 1943, \$14,197.83. These items, while material from the point of view of the applicant, should be deducted in order to ascertain the actual operating result of the line of railway.

The total number of carloads of freight handled over a three-year period ending April 30, 1944, is as follows: For the year ending 30th April, 1942, 476 cars; for the year ending 30th April, 1943, 312 cars, and for the year ending 30th April, 1944, 392 cars. Of the 392 cars of freight shipped in the year ending

April 30, 1944, 190 cars consisted of firewood cut by the Applicant Company in the vicinity of the line and shipped out over the Stave Falls Railway to assist in meeting the fuel situation in Vancouver. The remainder of the freight handled during that year comprised shipments of lumber from the mill located between Ruskin and the Ruskin Power development, which mill has now been permanently closed down and abandoned.

If the operation of the line of railway is to be continued an extensive renewal program will be necessary to put it into suitable condition for such operation. This statement of fact is shown in the report of one of the Board's district engineers, who made an examination of the railway on the ground some time prior to this hearing.

Stave Falls is the only urban settlement on the line of railway. The transportation needs of this and other communities affected can, we think, be reasonably served by means of highway transportation. There does not appear to be much, if any, future prospect of traffic for this line of railway. The fact that no opposition to the application has been made to the Board prior to the hearing, and the further fact that no one appears here in opposition to-day, would seem to indicate that no one in the community is very seriously concerned with the question of whether or not the line be continued or whether its operation be abandoned.

Upon consideration of all that has been placed before us in respect to the matter, we have reached the conclusion that the application should be allowed, and leave granted to the applicant to abandon further operation of the line of railway. It seems to us that the burden that would be imposed upon the applicant railway, if it were required to continue operation of the line, is clearly very much greater than any burden or inconvenience that would be placed upon the public concerned by granting the application. There will accordingly be an order granting the application. Both my colleagues, Mr. Commissioner Stoneman and Mr. Commissioner MacPherson, concur in this decision and in the reasons for judgment.

ORDER No. 65263

In the matter of the application of the Western Power Company of Canada, Limited, hereinafter called the "Applicant", under Section 165A of the Railway Act, for authority to abandon the operation of a line of railway from Applicant's works on the Stave River, in the Province of British Columbia, to a point on the main line of the Canadian Pacific Railway Company near Ruskin, British Columbia, a distance of 6.21 miles:

File No. 44022

WEDNESDAY, the 20th day of September, A.D. 1944.

J. A. CROSS, K.C., *Chief Commissioner.*

J. A. STONEMAN, *Commissioner.*

F. M. MACPHERSON, *Commissioner.*

Upon hearing the application at the sittings of the Board held in Vancouver, British Columbia, on August 28, 1944, in the presence of Counsel for the Applicant, and what was alleged,—

It is ordered: That the abandonment of operation of the Applicant's line of railway from Applicant's works on the Stave River to a point on the main line of the Canadian Pacific Railway Company near Ruskin, in the Province of British Columbia, a distance of 6.21 miles, be, and it is hereby, approved.

J. A. CROSS,
Chief Commissioner.

Application of La Patrie Publishing Company Limited, Montreal, Que., for a ruling of the Board with respect to the Express Rates applicable for the transportation of the Sunday edition of La Patrie.

File 43987

CROSS, CHIEF COMMISSIONER:

This matter arises out of a dispute between La Patrie Publishing Company, Limited, Montreal, Que., hereinafter referred to as the "Applicant", and the express companies with regard to the express rates applicable for the transportation of the Sunday edition of *La Patrie*. The Applicant and the express companies (through the Express Traffic Association of Canada, hereinafter referred to as the "Association") have set out their position and contention in written submissions filed with the Board and state they are prepared to have the matter disposed of by the Board upon these submissions.

The provisions contained in Express Classification of Canada, No. 8, currently in effect, read as follows:—

"NEWSPAPERS, MAGAZINES AND SIMILAR PUBLICATIONS

	RATE
13 Charges on newspapers, magazines and similar publications must be prepaid, except that on returned shipments the guarantee of the destination Agent may be accepted.	
Newspapers, N.O.S., Magazines, and other publications authorized by the Postmaster General of Canada for transmission as Second-Class matter, when shipped by Publishers or News Companies, or returned to them by dealers:	
Pound rates, minimum 13 cents. (See Condition of Carriage No. 8)....	1
Magazine covers, returned to original shipper—Pound rates, minimum 13 cents. (See Condition of Carriage No. 8).....	1

14-B NEWSPAPERS, DAILY

When shipped daily by Publishers or News Companies on the date of publication or the evening immediately preceding, charge on the aggregate weight as follows:—

To points not over 300 miles distant, $\frac{1}{4}$ of a cent per pound.

To points over 300 miles distant to which the First-Class rate does not exceed \$6.05 per 100 pounds, $1\frac{1}{4}$ cents per pound.

To points to which the First-Class rate exceeds \$6.05 per 100 pounds, one-half First-Class pound rates.

Between competitive points the mileage of the Company having the short line will govern.

The rates on daily newspapers will apply on the news section of extra Saturday edition of newspapers published in Canada which are shipped by express daily, when such extra editions are shipped on the day of publication or the evening immediately preceding.

(The rates on daily newspapers do not include vehicle service, are not applicable to shipments of newspapers forwarded C.O.D., and will apply only to publications generally recognized as a newspaper, and which consist wholly or in great part of political and other general news)."

The position and contention of the Applicant is set out in the following extracts from its submissions:—

"La Patrie Publishing Company Limited, published up to 8 years ago, a daily edition including a special Saturday edition, selling at .05c. In January, 1935, we added a seventh edition, also selling at .05c., called *La Patrie—Journal du Dimanche*.

It was registered in Ottawa as a seventh edition of our regular paper and not as a weekly. It was also accepted by the Audit Bureau of Circulations as such, and no dues were paid as for a weekly, same case applies to Canadian Press Franchise and other news agencies.

This seventh edition launched 8 years ago could not, according to post office rules, carry the same serial numbers as the daily. The country circulation of our daily is mostly "subscription circulation" and is shipped individually by mail, whilst part of our Saturday and our Sunday circulation is obtained through dealers. This explains why many dealers do not handle the daily.

True, that item 13, page 28, of the Express Classification, does not classify our seventh edition as part of the daily for the simple reason that we are in a unique situation in Canada.

We are the only publishing company, printing 7 editions a week (daily and Sunday), under the same title.

In item 14-B, special privileged rates were granted to weekly papers released on Saturday, allowing the same rate as the daily on shipments of their news section only. When that rule was put into effect, there was not 'seven day' a week newspaper in Canada.

May we add that to-day, due to the tremendous success of this seventh edition, the Express companies benefit to a large extent of additional business compensating for small revenues provided by a rather limited daily.

In conclusion we claim that we should be classed as a 'seven day' paper as this added edition carries the same title, is printed and published by the same company, with the same personnel, same advertising sales force, as well as same circulation representatives and regular dealers."

"This Sunday edition is printed on Saturday noon and Saturday night with a predate edition printed on Wednesday afternoon. This predate edition bears the date of the following Sunday and is shipped to far distant points that cannot be reached with the Saturday delivery."

* * * *

"... our seventh edition has enjoyed a tremendous success leaving far behind the circulation of our six first editions, in circulation and number of dealers. This explains why copies of this edition go to many more dealers than the daily or the Saturday editions."

* * * *

In its submissions, the Association states:—

"Express Classification for Canada No. 8 provides very low rates on daily newspapers moving in volume regularly each day to the same consignees, as covered by Item 14-B, page 28, Supplement No. 9, which reads:—

(Already above quoted herein.)

Now the Sunday edition of *La Patrie* is not shipped daily on the date of publication nor on the evening immediately preceding publication. It is, however, published and shipped twice weekly, that is on Wednesday and Saturday, though both these editions are dated the Sunday following. Further, despite the fact the *Journal du Dimanche* may be registered with the Post Office Department at Ottawa as a seventh edition of a regular newspaper, it does not carry the same serial numbers as the daily editions, which indicates it is not part and parcel of a daily paper, being in exactly the same position as the Montreal

Standard, which is published by the *Montreal Star*, and the *Toronto Star Weekly* published by the *Toronto Daily Star*. It cannot be contended that either the *Montreal Standard* or the *Toronto Star Weekly* is a daily newspaper, and the Sunday edition of *La Patrie* is in the same category as the two weeklies in question.

It is our understanding ordinary subscriptions to *La Patrie* would not include the Sunday edition, and should a subscriber desire the Sunday edition an additional charge is made over and above the regular subscription rate for the daily.

The special rates on daily newspapers authorized by the Express Classification were established to take care of daily newspapers which move in volume regularly each week day to the same consignee, whereas the Sunday edition of *La Patrie* is shipped to consignees and to places which do not also receive the daily edition regularly by express.

It is apparent from the above that the Sunday edition of *La Patrie* is not a daily newspaper within the meaning of Item 14-B of the Express Classification, quoted above, and that being the case, the daily newspaper rates do not apply."

* * * *

The Applicant describes its publications as Daily Edition and Sunday Edition. The subscription rate for its Daily Edition, that is to say Monday to Saturday inclusive, is 12 months \$5, 6 months \$2.75, 3 months \$1.50. In addition, it shows the subscription rate of the Sunday Edition as 12 months \$3.50, 6 months \$1.75, and furnishes the following description thereof:—

"SUNDAY EDITION OF LA PATRIE
FRENCH CANADIANS' NATIONAL PAPER

FOUR SECTIONS:

ROTO-MAGAZINE

COMICS — NEWS

88 PAGES

CIRCULATION 200,000 COPIES EACH SUNDAY

For sale in all localities of the Province"

It seems clear that a person desiring both the Daily Edition and the Sunday Edition pays two separate subscription rates; that, as stated by the Applicant, the circulation of the Sunday Edition leaves "far behind the circulation of our six first editions" and is purchased by a great many persons who do not take the Daily Edition, desiring only the weekly paper or Sunday Edition; that, consequently, the Sunday Edition is in fact a separate and a weekly publication.

Upon careful consideration of what is before us on this record, I consider that the Applicant's Sunday Edition does not fall within the provisions of Item 14-B and is, consequently, subject to the provisions of Item 13 (both provisions have been already quoted herein).

Ottawa, September 25th, 1944.

J. A. CROSS.

I agree

G. A. STONE.

F. M. MACPHERSON.

ACCIDENTS REPORTED TO THE OPERATING DEPARTMENT BOARD OF TRANSPORT COMMISSIONERS FOR CANADA, AUGUST, 1944

Railway Accidents	196 with 19 killed and 229 injured
Level Crossing Accidents	25 with 16 killed and 27 injured
Totals	<u>221 with 35 killed and 256 injured</u>

	Killed	Injured
Passengers	—	62
Employees	11	149
Others	24	45
Totals	<u>35</u>	<u>256</u>

DETAILS OF ACCIDENTS AT HIGHWAY CROSSINGS

PRINCE EDWARD ISLAND

Accidents	K.	I.	
1	1	—	Auto truck ran into side of train. Licence No. not given.

NEW BRUNSWICK

1	—	2	Auto truck drove onto crossing in front of approaching train and was struck. Licence, N.B. C-2275.
1	—	1	Automobile ran into side of train. Licence, Maine 143-799.

QUEBEC

1	4	4	Automobile drove onto crossing in front of approaching train and was struck. Licence Ont. 86-P-81.
1	—	1	Auto truck stalled on crossing due to illness of driver. Licence, Que. F-13680.
1	—	1	Auto truck drove onto crossing in front of approaching train and was struck. Licence, Que. L-5591.
1	1	—	Auto Bus drove onto crossing in front of approaching train and was struck. Licence not given.
1	1	—	Pedestrian walked onto crossing in front of approaching train and was struck.

ONTARIO

1	—	1	Dominion Government Universal Carrier drove onto crossing in front of approaching train and was struck. Licence, Ont. 8123-F.
1	—	1	Automobile ran into side of train. Licence not given.
1	1	2	Auto truck ran into side of train. Licence, Ont. 35989-T.
1	—	2	Automobile ran into side of train. Licence, Ont. 766-P-4.
1	—	1	Automobile ran into side of train. Licence, Ont. 825-J-2.
1	1	—	Horse-drawn vehicle drove onto crossing in front of approaching train and was struck.
1	1	—	Pedestrian walked onto crossing in front of approaching train and was struck.
1	1	1	Motor-cycle ran into side of train. Ont. Licence 5268.
1	3	1	Automobile drove onto crossing in front of approaching train and was struck. Licence, Ont. 74-D-99.
1	—	1	Automobile drove onto crossing in front of approaching train and was struck. Licence, Ont. 758-Y-2.
1	—	2	Automobile ran into side of train. Licence, Ont. H-747.
1	2	—	Auto truck ran into side of train. Licence, Ont. PCV-4589.

DETAILS OF ACCIDENTS AT HIGHWAY CROSSINGS—*Concluded*

Accidents K. I.

SASKATCHEWAN

- | | | | |
|---|---|---|--|
| 1 | — | 1 | Road grader drove onto crossing in front of approaching train and was struck. |
| 1 | — | 2 | Auto truck drove onto crossing in front of approaching train and was struck. Licence, Sask. A-041. |

ALBERTA

- | | | | |
|---|---|---|---|
| 1 | — | 1 | Speeder struck automobile. Licence not given. |
|---|---|---|---|

BRITISH COLUMBIA

- | | | | |
|---|---|---|---|
| 1 | — | 1 | Automobile ran into side of train. Licence, B.C. 43785. |
| 1 | — | 1 | Gasoline truck ran into side of train. Licence not given. |

Of the 25 accidents at highway crossings, 21 occurred at unprotected crossings and 4 at protected crossings. Twenty-one of the accidents occurred after sunrise and four after sunset.

September 27th, 1944.

SUMMARY OF ORDERS ISSUED BY THE BOARD

- 65259 Sept. 20—Authorizing C.N.R. to construct spurs to serve Castle Coal Co. across highway in N.E. Quarter, Sec. 7, Twp. 28, Rge. 19, W. 4 M., near Wayne, Alta.
- 65260 Sept. 20—Exempting Pere Marquette Railway from publication of notice *re* application for sanction of agreement between P.M.R. and The Lake Erie and Detroit River Ry. *re* running rights in Canada.
- 65261 Sept. 20—Recommending to Governor in Council for sanction agreement between P.M.R. and The Lake Erie and Detroit River Ry. *re* running rights in Canada.
- 65262 Sept. 20—Declaring C.N.R. crossing of highway about two miles north of Preston, Ont., protected to Board's satisfaction.
- 65263 Sept. 20—Approving abandonment of operation of Western Power Co. of Canada Ltd. line of railway from their works on the Stave River, B.C., to a point on main line of C.P.R., near Ruskin.
- 65264 Sept. 20—Approving under Maritime Freight Rates Act tolls published in tariffs filed by Canadian Freight Association under Sec. 3.
- 65265 Sept. 21—Authorizing C.P.R. to construct branch line of railway for the Bird Construction Co. Ltd. at St. Boniface, Man.
- 65266 Sept. 21—Declaring C.N.R. crossing of Avenue "P", Saskatoon, Sask., protected to Board's satisfaction; speed limitation of ten miles per hour at crossing to be maintained.
- 65267 Sept. 21—Authorizing R.M. of Ponass Lake No. 367, Sask., to construct highway crossing over tracks of C.P.R. in N.W. Quarter of Sec. 28, Twp. 38, Rge. 13, W. 2 M., village of Rose Valley, Sask.
- 65268 Sept. 23—Amending Order No. 65195 dated August 30, 1944, requiring the C.N.R. to install two flashing light signals and one pedestrian bell at Main Street, Palmerston, Ont.
- 65269 Sept. 21—Declaring C.P.R. crossing of highway, being third public road crossing west of McWilliams, Ont., protected to Board's satisfaction.
- 65270 Sept. 21—Authorizing C.P.R. to construct branch line of railway to serve Birnwell Coal Ltd., near Kitsin, Alta.
- 65271 Sept. 21—Declaring C.P.R. crossing of highway, being first public crossing west of Maunsell Station, Alta., protected to Board's satisfaction.
- 65272 Sept. 21—Authorizing C.P.R. to carry out changes in connection with interlocking plant at its crossing with tracks of the Sudbury-Copper Cliff Suburban Electric Ry. Co. Ltd., at Elm Street, Sudbury, Ont.
- 65273 Sept. 22—Authorizing C.N.R. to make changes in connection with their interlocking plant at their crossing of Edmonton Street railway on 107th Avenue, Edmonton, Alta.
- 65274 Sept. 20—Authorizing C.N.R. to carry out the changes at the interlocking plant at their crossing with Canadian Pacific Railway on the Brookdale branch near Deer, Man.
- 65275 Sept. 23—Authorizing the Toronto Harbour Commissioners to construct branch line of railway to serve Canada Coal Ltd. in the city of Toronto, Ont.
- 65276 Sept. 23—Directing C.P.R. to install three flashing light signals and one bell at crossing of Regent Street, Sudbury, Ont.
- 65277 Sept. 25—Approving plan No. S.D. 3055.A, dated 5th September, 1944, showing changes in the crossing protection at Cadillac Street, Montreal, Que.
- 65278 Sept. 26—Approving location of C.P.R. Co's station at Osoyoos, B.C.
- 65279 Sept. 26—Authorizing C.P.R. to construct connecting track with tracks of C.N.R. at mileage 20.0 Parry Sound Subd.
- 65280 Sept. 27—Approving under Maritime Freight Rates Act tolls published in tariffs filed by C.N.R. under Sec. 3.
- 65281 Sept. 27—Authorizing C.N.R. to open for traffic diversion of 1,500 feet of main line on the Montfort Subd., Que.
- 65282 Sept. 27—Declaring C.P.R. crossing of First Avenue, being first crossing east of station at Fleming, Sask., protected to Board's satisfaction.
- 65283 Sept. 27—Authorizing Dept. of Public Works for Alberta to construct extension of Cunliffe Street across the tracks of the C.N.R., Athabasca, Alta.

SUMMARY OF ORDERS ISSUED BY THE BOARD—*Concluded*

- 65284 Sept. 28—Declaring C.N.R. crossing of Cascade Street, Parry Sound, Ont., protected to Board's satisfaction.
- 65285 Sept. 28—Declaring C.N.R. crossing of highway at mileage 89.32 Preeceville Subd., Sask., protected to Board's satisfaction.
- 65286 Sept. 29—Approving clearances at C.N. Rys. siding serving the Colgate-Palmolive-Peet Co. Ltd., Toronto, Ont.
- 65287 Sept. 29—Declaring New York Central Railroad crossing of Talbot St., Essex, Ont., protected to Board's satisfaction.
- 65288 Sept. 29—Declaring C.N.R. crossing of Highway No. 59, being the first crossing east of Joannes Station, Que., protected to Board's satisfaction.
- 65289 Sept. 28—Declaring C.N.R. crossing of Highway No. 3, being the first public crossing east of St. Francois du Lac Station, Que., protected to Board's satisfaction.
- 65290 Sept. 29—Declaring Esquimalt & Nanaimo Ry. crossing of highway, being first public crossing north of Hayward Station, B.C., protected to Board's satisfaction.
- 65291 Sept. 29—Declaring Toronto, Hamilton & Buffalo Ry. crossing of Cochrane Road, about two miles east of Kinnear, Ont., protected to Board's satisfaction.
- 65292 Sept. 29—Authorizing C.P.R. to operate its engines, cars, etc., over spur track of the Dept. of National Defence at mileage 4.9 County of Simcoe, Ont.
- 65293 Sept. 29—Authorizing C.P.R. to operate jointly with C.N.R. their engines, etc., over branch line and siding of Dept. of National Defence at mileage 7.01 Camp Borden spur track, Ont.
- 65294 Sept. 29—Authorizing Temiscouata Ry. Co. to erect signboard at crossing known as the Fraser Crossing, about one-quarter of a mile south of Cabano Station, Que.
- 65295 Sept. 29—Approving agreement between the Canadian Northern Railway Co. and Canadian National Telegraph Co., and the city of Fort William.
- 65296 Sept. 30—Approving plan showing operating circuits of wigwag signals at crossing of Queen Street, Streetsville, Ont.
- 65297 Sept. 30—Approving supplementary agreement dated September 21, 1944, between certain telephone companies operating the Trans-Canada Telephone system and the Bell Telephone Co. of Canada.
- 65298 Sept. 30—Approving plan showing operating circuits of wigwag signal at the crossing of St. Thomas Street, Streetsville, Ont.
- 65299 Oct. 2—Approving location of tank car, unloading racks, etc., of North Star Oil Limited, near C.N.R. tracks at Edmonton, Alta.
- 65300 Oct. 2—Authorizing C.P.R. to construct branch line to serve Tomlinson Brothers at Port Arthur, Ont.
- 65301 Oct. 3—Declaring Vancouver, Fraser Valley & Southern Ry. crossing of Willingdon Avenue, being first crossing east of Queens Station, Burnaby, B.C., protected to Board's satisfaction.
- 65302 Oct. 4—Declaring C.N.R. crossing of Governors Road at mileage 2.28 Dundas Subd. 2.28 miles west of Eastwood, Ont., protected to Board's satisfaction.
- 65303 Oct. 3—Approving under Maritime Freight Rates Act tolls published in tariffs filed by C.N.R. under Sec. 3.
- 65304 Oct. 3—Approving under Maritime Freight Rates Act tolls published in tariffs filed by the Canadian Freight Association under Sec. 3.

The Board of Transport Commissioners for Canada

Judgments, Orders, Regulations and Rulings

Vol. XXXIV

Ottawa, November 1, 1944

No. 15

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Application of Joseph Warren Beggs and Maude Beggs, his wife, both of the City of Winnipeg, Manitoba, for an Order directing the Canadian Northern Railway Company (Canadian National Railways) to construct and open a crossing over the right of way of the Railways, at Grand Beach, Manitoba.

File No. 21297.72

Mr. H. P. BLACKWOOD, K.C., appeared for the Applicants, and
Mr. A. K. DYSART and Mr. W. J. B. GRIERSON for the Railways.

Heard at Winnipeg, Man., September 6, 1944

JUDGMENT

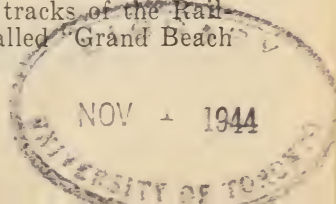
CROSS, CHIEF COMMISSIONER:

This is an application by Joseph Warren Beggs and Maude Beggs, his wife, both of the city of Winnipeg, Manitoba, hereinafter called the applicants, for an order directing the Canadian Northern Railway Company (Canadian National Railways) hereinafter called the Railways, to construct and open a crossing over the right of way of the Railways, at Grand Beach, Manitoba, for the purpose of giving the applicants access from the public road to their summer cottage and lands.

The applicants, or one of them, own Legal Subdivisions 1, 2, 3 and 4 and so much of Legal Subdivision 5 as is east of the railway right of way, and also the fractional south half of Legal Subdivisions 7 and 8, in section 19, township 18, range 7, east of the principal meridian, in the province of Manitoba.

The applicants have constructed on Legal Subdivision 5, which lies on the east side of the railway right of way, a cottage or summer home which they use and occupy during certain of the summer months of the year. Mr. Joseph Warren Beggs, one of the applicants, states that it is his intention later to make the cottage and lands his permanent home.

The location of the crossing over the right of way and tracks of the Railways, as applied for, and the location of the public road, called "Grand Beach"



Road", and the Beggs cottage and property (part of Legal Subdivision 5) is as shown on Canadian National Railways plan, dated Winnipeg, January 11, 1944, File 4610-VB.11, on file with the Board.

The applicants' cottage and property are devoid of access to a public road or highway. The construction of the crossing asked for would give them access to and from said "Grand Beach Road". The applicants now reach their summer property by the unauthorized use of the property of the Railways.

There is a considerable amount of wood and hay on the property of the applicants. At the present time, any wood or hay cut on the premises can only be moved out over another crossing some substantial distance away during the winter months. It would be of material advantage to the applicants in the use of their land and in the disposal of their hay and wood if they had access by means of a crossing over the railway which could be used in the summer as well.

The Railways oppose the application chiefly on the ground that construction of the crossing would create a distinct hazard in the operation of the trains of the Railways and to people using the crossing.

Grand Beach is a summer resort situate on Lake Winnipeg, Manitoba. During certain periods in the summertime many thousands of people visit Grand Beach. The great majority of these people are carried to and from Grand Beach by the Railways. There are, during such periods, a large number of train movements over the location of the proposed crossing. For a nine-day period, August 19 to August 27, 1944, the train movements, including switching movements, averaged 25 per day for the period.

Owing to conditions existing at the place all trains approaching Grand Beach are required by the Railways to do so with extreme caution. The engineers of the trains, therefore, must keep their trains under control, that is they must have the speed down to about ten miles an hour with the brakes in operation. This requirement in the manner of operation of trains must tend to materially reduce the hazards at the location of the proposed crossing and elsewhere in the locality.

If the applicants are to be given access over the railway to their property it is agreed that there is no more convenient place for such a crossing than at the point shown on the plan already referred to.

The present application, in my opinion, falls under section 273 of the Railway Act, and not under section 272. Under section 273 the Board may, upon application of any landowner, order a railway company to provide and construct a suitable farm crossing across the railway, wherever in any case the Board deems it necessary for the proper enjoyment of his land, and safe in the public interest; and may also order and direct how, when, where, and by whom, and upon what terms and conditions, such farm crossing shall be constructed and maintained.

Upon consideration of all that has been placed before us I deem the crossing applied for necessary for the proper enjoyment by the applicants of their land, and safe in the public interest.

I think that an order should be made directing the Railways to provide and construct a suitable farm crossing across the railway at the location as shown on Canadian National Railways plan, dated Winnipeg, January 11, 1944, File 4610-VB. 11, on file with the Board, and in accordance with the Board's Standard Regulations regarding Farm Crossings.

There remains for consideration what terms and conditions should be imposed.

The railway was constructed into Grand Beach in 1914. The applicants purchased that portion of their lands described as Legal Subdivision 5, in the year 1930, on which the summer cottage is built. The Railways are, therefore, senior to the applicants. The applicants were, at the time, aware of the

situation and of the location of the roadway and the railway in relation to the land. They appear to have relied upon the assurances of their vendor that there would be no difficulty in securing a crossing. There was no building on Legal Subdivision 5 at the time of purchase of the land.

The estimated cost of constructing the crossing as furnished by the Railways is \$140. It has been the general practice of the Board in connection with the applications under section 273 of the Railway Act to place the cost of construction and future maintenance of the crossing upon the applicant. In this respect see: *New vs. Toronto, Hamilton and Buffalo Ry. Co.* 8 C.R.C. 50; *Richards and Bennett vs. Grand Trunk Ry. Co.*, 14 C.R.C. 329; *Wimbles vs. Grand Trunk Pacific Ry. Co.* 21 C.R.C. 191; *Messrs. Cayer, Anctil and Proulx vs. Grand Trunk Ry. Co.* 7 Board's Judgments, Orders, Rulings and Regulations, 1917, page 399; and *Emile Lazure vs. Canadian National Railways*, 46 C.R.C. 150.

Following the usual rule in cases of this kind I would place the cost of construction and future maintenance of the crossing upon the applicants.

J. A. CROSS.

OTTAWA, October 5, 1944.

I concur:

J. A. STONEMAN.

F. M. MACPHERSON.

ORDER No. 65309

In the matter of the application of Joseph Warren Beggs and Maude Beggs, his wife, both of the City of Winnipeg, Manitoba, for an Order directing the Canadian Northern Railway Company (Canadian National Railways) to construct and open a crossing over the right of way of the Railways, at Grand Beach, Manitoba.

File No. 21297.72

SATURDAY, the 7th day of October, A.D. 1944.

J. A. CROSS, K.C., *Chief Commissioner.*

J. A. STONEMAN, *Commissioner.*

F. M. MACPHERSON, *Commissioner.*

Upon hearing the application at the sittings of the Board held at Winnipeg on September, 5, 1944, in the presence of Counsel for the Applicants and the Railway Company, and what was alleged—

It is ordered:

1. That the Canadian National Railways be, and they are hereby, required to provide and construct a suitable farm crossing across the railway at Grand Beach, Manitoba, at the location as shown on Canadian National Railways plan dated Winnipeg, January 11, 1944 (File 4610-VB.11), on file with the Board under file No. 21297.72, and in accordance with the Standard Regulations of the Board Regarding Farm Crossings.

2. That the cost of constructing and maintaining the crossing hereby authorized be borne and paid by the Applicants.

J. A. CROSS,
Chief Commissioner.

ORDER No. 65326

In the matter of the application of J. F. Flynn, Agent, Canadian Freight Association, hereinafter called the "Applicant", for permission to amend his Tariff C.T.C. No. 529 on less than statutory notice to correct an error.

File No. 27612.269

FRIDAY, the 13th day of October, A.D. 1944.

J. A. CROSS, K.C., *Chief Commissioner.*

HUGH WARDROPE, *Asst. Chief Commissioner.*

J. A. STONEMAN, *Commissioner.*

Whereas, through typographical error on page 40 of the Applicant's Tariff C.T.C. No. 529, on lumber from British Columbia points to Eastern Canada, at index numbers 2696 Balls Creek, 2712 Sydney River, and 2718 Sydney, Nova Scotia, a rate of 101 cents per 100 pounds is published under group B from points taking Rate Basis 1—

And whereas the proper and intended rate should be 110 cents per 100 pounds—

It is ordered: That the applicant be, and he is hereby, permitted to amend his Tariff C.T.C. No. 529 on one day's notice to correct the said error.

J. A. CROSS,

Chief Commissioner.

SUMMARY OF ORDERS ISSUED BY THE BOARD

- 65305 Oct. 4—Authorizing Toronto, Hamilton & Buffalo Ry. Co., the C.N.R. and the Wabash Railway Co. to operate their trains through interlocking plant at Diltz, Ont.
- 65306 Oct. 4—Authorizing Toronto, Hamilton & Buffalo Ry. Co., & the New York Central Railroad Co. to operate their trains through interlocking plant near Diltz, Ont.
- 65307 Oct. 4—Authorizing C.N.R. and Toronto, Hamilton & Buffalo Ry. Co. to operate their trains through interlocking plant at mileage 14.28 Dunnville Subd., Dunnville, Ont.
- 65308 Oct. 7—Declaring C.P.R. crossing of highway .79 of a mile east of Fairville, N.B. protected to Board's satisfaction.
- 65309 Oct. 7—Authorizing C.N.R. to provide and construct farm crossing at Grand Beach, Man.
- 65310 Oct. 7—Approving location of pipe lines, etc., of Hi-Way Refineries Ltd. near C.N.Rys. at Prince Albert, Sask.
- 65311 Oct. 7—Approving location of pipe lines, etc., of Imperial Oil Ltd. near Northern Alberta Rys. at Rycroft, Alta.
- 65312 Oct. 10—Approving location of pipe lines, etc., of Imperial Oil Ltd. near C.N.Rys. at Macleod, Alta.
- 65313 Oct. 10—Approving Supplement No. 3 to agreement between The Bell Telephone Co., Ltd., and the Mallorytown Telephone Co., Ltd.
- 65314 Oct. 11—Approving under Maritime Freight Rates Act tolls published in tariffs filed by C.N.R. under Section 3.
- 65315 Oct. 7—Declaring C.N.R. crossing of highway 200 feet southwest of Richmond Station, P.E.I. protected to Board's satisfaction.
- 65316 Oct. 11—Declaring C.P.R. crossing of St. Leon Street, St. Joseph de Grantham, Que. protected to Board's satisfaction.
- 65317 Oct. 11—Approving plan No. SD.3349, dated Sept. 29, 1944, showing protection at crossing of 55th Avenue, Lachine, Que.

SUMMARY OF ORDERS ISSUED BY THE BOARD—*Concluded*

- 65318 Oct. 11—Authorizing C.P.R. to construct trackage to serve the Red River Grain Co. Ltd. at St. Boniface, Man.
- 65319 Oct. 11—Declaring C.N.R. crossing of Provincial Highway No. 80 3.6 miles south of Pembroke Station, Ont. protected to Board's satisfaction.
- 65320 Oct. 11—Declaring C.N.R. crossing of highway first south of Howden Station, Man. protected to Board's satisfaction.
- 65321 Oct. 11—Authorizing C.N.R. to operate their trains through interlocking plant at St. Henri, Que.
- 65322 Oct. 13—Declaring C.P.R. crossing of highway at mileage 94.38 Taber Subd., Alta. protected to Board's satisfaction.
- 65323 Oct. 12—Declaring C.P.R. crossing of Mercier St. third public crossing north of St. Johns Station, Que. protected to Board's satisfaction.
- 65324 Oct. 12—Declaring C.N.R. crossing first east of Coteau Station, Que., protected to Board's satisfaction.
- 65325 Oct. 12—Authorizing the C.N.R. and the Canada Cement Co. Ltd. to operate their trains through interlocking plant at Lakefield Avenue, Montreal East, Que.
- 65326 Oct. 13—Authorizing J. F. Flynn, Agent, Canadian Freight Association to amend his Tariff C.T.C. No. 529 to correct an error.
- 65327 Oct. 12—Authorizing C.N.R. to install automatic flashing light signals, etc. at their crossing of 93rd St., Edmonton, Alta.
- 65328 Oct. 12—Authorizing R.M. of Bjorkdale No. 426, Sask., to construct highway crossing over C.N. Rys. at mileage 40.1 Tisdale Subd., Sask.
- 65329 Oct. 13—Authorizing C.P.R. to construct branch line of railway and siding to serve the Brompton Pulp & Paper Co. Ltd. at Red Rock, Ont.
- 65330 Oct. 16—Approving plans Nos. Y1F 31-2.6A-1/1 and Y1F 31-2.6A-1/2 showing crossing of tracks of C.N.Rys'. Eastern Junction-Bout de l'Île line at mileage 2.25, Stanley Bagg (Millen) Street, Montreal, Que.
- 65331 Oct. 14—Approving relocation of warehouse, etc. of The British American Oil Co. Ltd. near C.N.Rys. at Athabasca, Alta.
- 65332 Oct. 14—Declaring C.N.R. crossing of Walker Ave. fourth crossing east of station at Emo, Ont. protected to Board's satisfaction.
- 65333 Oct. 12—Authorizing C.N.R. to install wigwag at crossing of Lancaster Street, Kitchener, Ont.

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The Board of Transport Commissioners for Canada

Judgments, Orders, Regulations and Rulings

Vol. XXXIV

Ottawa, November 15, 1944

No. 16

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Application of the Town of Gladstone, Manitoba, for the installation of additional protection at the crossing of Morris Avenue (sometimes called Main Street), in the said Town of Gladstone, by the Canadian National Railways and the Canadian Pacific Railway Company, by extending the hours during which a watchman is on duty at such crossing, as provided for in Board's Order No. 16237, dated April 1, 1912, or for the installation of some form of protection at such crossing, and consideration of the question of apportionment of the cost of such protection.

File 9437.732

Mr. A. K. DYSART appeared for the Canadian National Railways.

Mr. I. D. SINCLAIR appeared for the Canadian Pacific Railway Co.

Mr. R. McASKILL, Mayor, Mr. J. D. Rogers and Mr. J. Plaxton, Councillors of the Town of Gladstone, appeared for the Town.

Heard at Portage la Prairie, Man., AUGUST 21, 1944.

JUDGMENT

J. A. STONEMAN, *Commissioner*.

This matter was heard at Portage la Prairie, Manitoba, August 21st, 1944. It is an application by the Town of Gladstone, in the Province of Manitoba, hereinafter called the "Town", for an Order directing the Canadian National Railways and the Canadian Pacific Railway Company, hereinafter called the "Railways", to instal additional protection at Morris Avenue (sometimes called Main Street) railway level crossing by extending the hours of protection by a watchman, from 8 p.m. to 12 p.m. The Board's Order No. 16237, dated April 1, 1912, provides for the protection of this crossing by a watchman during the hours 8 a.m. to 8 p.m. daily. Under this Order the wages of the watchmen are paid by the Railways.

A brief summary of the file reveals that the Board's Order, referred to above, issued following reports of its inspecting officers and a hearing of the matter at a sittings of the Board in Winnipeg, Man., on 25th March, 1912.

On March 5, 1924, application was made by the Canadian National Railways for an Order permitting the installation of an automatic flag-man in lieu of the watchmen, as provided under Order No. 16237. In written submissions the Town opposed the application of the Railway and the matter was heard in Winnipeg, November 21, 1924. Order No. 35867 issued December 9, 1924, refusing the application.

The only accident reported, involving personal injury, is dated November 24, 1942, and occurred on November 23, 1942, at 23:05K o'clock. The District Inspector's report, dated December 14, 1942, stated that this accident occurred when a C.P.R. freight train travelling at a speed of 15 miles per hour was struck by an automobile driven by William Robertson. The statutory warning signals had been given approaching the crossing, the head light was burning, and the crossing signs, planking and approaches were all in good order. The view lines were restricted by buildings built up in a continuous unit between No. 4 highway and the railway on the west side within about 6 feet of the Canadian National track, which is south of the Canadian Pacific. The Inspector recommended that the Canadian Pacific Railway Company be required to observe a 10-mile per hour speed restriction over the crossing during the hours when the watchman was not on duty. Order No. 63154, dated January 11, 1943, issued, directing that the crossing be protected by a watchman between the hours of 8 a.m. and 8 p.m. daily and that a speed restriction of 10 miles per hour between 8 p.m. and 8 a.m. daily be maintained by the Canadian Pacific Railway Company at the said crossing.

In a letter from the Secretary-Treasurer of the Town of Gladstone, dated April 6, 1943, attention of the Board was again called to the alleged dangerous condition at Morris Avenue level crossing. Correspondence between the Board, the Railways and the Town followed, and estimates of the cost of automatic protection was obtained from both the Railways as well as the estimated cost of extending the hours of the watchmen from 8 p.m. to 12 p.m. A study was made by the Engineering Department of the Board as to the feasibility of operating automatic signals at the point; traffic counts were also made by the Railways, and it was finally decided that the parties would be heard at a sittings of the Board at Portage la Prairie, Manitoba, on August 21, 1944.

From the evidence it is clear that the Town is opposed to the substitution of automatic protection for protection by watchman. In view of the nature of the Town's application, I do not think that anything further need be stated with regard to the estimated cost or feasibility of installing automatic protection, other than to say that the maintenance of automatic protection would be less expensive and thereby reduce the present cost, and extend protection for a twenty-four hour period per day. With regard to the application for extension of the hours of the watchmen, the evidence shows that since Order No. 16237, dated April 1, 1912, was issued, the train traffic has been reduced over the crossing for the 24-hour period, from approximately 46 to less than 20 trains, with both Railway Companies maintaining a permanent speed restriction of 10 miles per hour. The highway traffic, as disclosed from traffic counts taken, do not show that there is heavy highway traffic; but there is no doubt that the nature of the vehicular traffic has changed from horse-drawn to automobile and truck traffic since the present protection was ordered in 1912. There may also have been some increase in highway traffic at the crossing since that time.

At page 904 of Volume 712, Mr. Sinclair, Counsel for the Canadian Pacific Railway Company, undertook to file, and has since filed with the Board, details of a traffic count over Morris Avenue Crossing. The statement shows the Canadian Pacific train movements in the month of July, 1944, over Morris Avenue Crossing, Gladstone, Manitoba, and the highway movements, both pedestrian and vehicular, for August 15 and 16, 1944, as follows:—

CANADIAN PACIFIC TRAIN MOVEMENT IN THE MONTH OF JULY, 1944, OVER
MORRIS AVENUE CROSSING, GLADSTONE, MANITOBA

Date and Hour	Psg'r. Trains	Frt. Trains	Total Trains on Daily Average
8K— 20K	28	139	5.38
20K— 24K	Nil	28	.90
24.01K— 8K	53	49	3.29
			<hr/>
			Total Daily Average.... 9.57

HIGHWAY MOVEMENT

Pedestrians		Vehicles, all Types	
August 15	August 16	August 15	August 16
8K— 9K 48	85	19	30
9K— 10K 70	45	29	27
10K— 11K 114	139	46	55
11K— 12K 86	100	36	40
12K— 13K 91	76	37	32
13K— 14K 70	33	36	14
14K— 15K 93	25	33	10
15K— 16K 93	55	10	31
16K— 17K 102	54	47	26
17K— 18K 93	55	41	24
18K— 19K 68	25	34	18
19K— 20K 88	50	34	23
			<hr/>
1016	742	402	330
Total	1,758	Total	732
Hourly Average	73.25	Hourly Average	30.5
20K— 21K 75	45	21	26
21K— 22K 72	56	33	23
22K— 23K 63	30	48	20
23K— 24K 56	26	33	16
			<hr/>
266	157	135	85
Total	423	Total	220
Hourly Average	52.875	Hourly Average	27.5
24.01K— 1K 13	—	4	5
1K— 2K 2	—	1	1
2K— 3K 1	—	—	—
3K— 4K —	—	—	—
4K— 5K 2	—	—	1
5K— 6K 1	—	—	—
6K— 7K 3	—	6	—
7K— 8K 21	14	11	14
			<hr/>
43	14	22	21
Total	57	Total	43
Hourly Average	3.5625	Hourly Average .....	.2.687

The foregoing statement shows the number of trains of the Canadian Pacific Railway Company for the month of July, 1944, the daily average, the number of trains that move between 8K and 20K, 20K and 24K, and 24.01K and 8K separately. Highway movements are set out in detail and the number per hour and divided between the hours that the watchman is on duty under the provisions of Board's Order No. 16237, the hours to which the Town desire protection by watchmen extended, and the hours between midnight and the time the watchman would come on duty at 8 a.m. The Canadian Pacific Railway Company traffic census statement set out in detail above, so far as highway traffic over the crossing is concerned, is equally applicable to the line of the Canadian National Railways. The movement of vehicles and pedestrians is the same over the crossing of each of the two lines of railway. It, however, does not show the number of Canadian National Railway train movements for the period mentioned.

Periodical checks of rail movements over Morris Avenue crossing made by Canadian National Railways on its line show the following results: For ten consecutive days in the month of February, 1943, a total of 72 movements, or an average of 7.2 per day; for the whole of the month of May, 1943, a total of 185 movements or an average of 6 per day; November 4, 1943, 12 movements, and from noon August 18, to noon August 19, 1944, 7 movements.

The train movements over the crossing, on each of the lines of railway, were about equally divided between the hours a watchman was on duty and was not on duty at the crossing.

What is set out above clearly shows that all types of traffic moving over the crossing are quite moderate.

Exhibit No. 2 showing sight lines at the crossing indicates that highway traffic from the south has very short sight lines; from the north the sight lines are fairly good.

The crossing is not a good crossing because of the short sight lines. But it is protected by a watchman between the hours of 8.00 a.m. and 8.00 p.m. daily, which includes the time that school children use the crossing in going to and coming from school. A speed restriction of 10 miles per hour over the crossing is also in effect on both lines of railway. The number of train movements over the crossing has been substantially reduced since the making of the original Order for protection by watchman.

For the reasons stated I do not think that further protection is necessary at this time. I would, therefore, dismiss the application.

Ottawa, October 19, 1944.

J. A. STONEMAN.

I concur:

J. A. CROSS.

F. M. MACPHERSON.

ORDER No. 65352

In the matter of the application of the Town of Gladstone, Manitoba, for the installation of additional protection at the crossing of Morris Avenue (sometimes called Main Street), in the said Town of Gladstone, by the Canadian Pacific Railway and the Canadian National Railways, by extending the hours during which a watchman is on duty at such crossing, as provided for in the Order of the Board No. 16237, dated April 1st, 1912, or for the installation of some form of protection at such crossing; and consideration of the question of the apportionment of the cost of such protection.

File No. 9437.732

FRIDAY, the 20th day of October, A.D. 1944.

J. A. CROSS, K.C., *Chief Commissioner.*

J. A. STONEMAN, *Commissioner.*

F. M. MACPHERSON, *Commissioner.*

Upon hearing the application at the sittings of the Board held at Portage la Prairie, Manitoba, on the 21st day of August, 1944, in the presence of Counsel for and representatives of the town of Gladstone, the Canadian Pacific Railway Company, and the Canadian National Railways, and what was alleged.

It is ordered: That the application be, and it is hereby, dismissed.

J. A. CROSS,

Chief Commissioner.

GENERAL ORDER No. 665

In the matter of the application of the Department of National Defence (Army) for an Order amending the Regulations for the Transportation of Explosives and Other Dangerous Articles by Freight and Specifications for Shipping Containers to permit Strike Anywhere Matches to be packed and shipped with other articles.

File No. 1717.87.31

TUESDAY, the 17th day of October, A.D. 1944.

J. A. CROSS, K.C., *Chief Commissioner.*

HUGH WARDROPE, *Assistant Chief Commissioner.*

G. A. STONE, *Commissioner.*

Upon the recommendation of the Director of Operation of the Board—

It is ordered: That the Regulations for the Transportation of Explosives and Other Dangerous Articles by Freight be, and they are hereby, amended by adding after the paragraph numbered 134-2 (page 36), the following:—

“134-2A. During the present emergency, or until further order of the Board, Strike Anywhere Matches may be included in a military ration pack when packed in the following manner: Twenty (20) only Strike Anywhere Matches packed in individual containers consisting of an outer sliding shuck or cover and an inner folding tray or box. The matches in the inner holding tray or box to be completely covered with wax. Complete package to be then placed in a Reynolds metal, heat-sealed foil bag or pouch.”

J. A. CROSS,
Chief Commissioner.

GENERAL ORDER No. 666

In the matter of the application of The Express Traffic Association of Canada for permission to ship by express samples of smokeless powder for cannon from Nobel, Ontario, Canada, to Dahlgreen, Virginia, United States of America.

File 1717.12.3

SATURDAY, the 21st day of October, A.D. 1944.

J. A. CROSS, K.C., *Chief Commissioner.*

HUGH WARDROPE, *Assistant Chief Commissioner.*

G. A. STONE, *Commissioner.*

Upon the recommendation of the Director of Operation of the Board—

It is ordered: That the Regulations for the Transportation by Express of Acids, Inflammables, Oxidizing Substances, Samples of Explosives, etc., be, and they are hereby, amended by adding to paragraph numbered 26 7/8, page 8, of the said Regulations, as amended by General Orders Nos. 631, 637, and 660, dated respectively October 30, 1942, January 13, 1943, and March 10, 1944, the following:—

"During the present emergency, and until further Order of the Board, samples of smokeless powder for cannon (nitro-cellulose colloid single-base powder) for testing purposes may be shipped by express from Nobel, Ontario, Canada, to the International Boundary for export to Proving Grounds in the United States, when packed and shipped under the following conditions:

"(1) Not more than 115 pounds net weight of powder in standard galvanized iron drums, with standard closure with rubber gasket;

"(2) Not more than 10 above described drums shall be shipped on any one train on any one day;

"(3) No shipments shall be made in express cars which are equipped with stoves."

J. A. CROSS,

Chief Commissioner.

ACCIDENTS REPORTED TO THE OPERATING DEPARTMENT BOARD OF TRANSPORT COMMISSIONERS FOR CANADA, SEPTEMBER, 1944

Railway accidents	176 with 18 killed and 183 injured
Level crossing accidents.....	27 with 14 killed and 39 injured
Totals	203 with 32 killed and 222 injured

	Killed	Injured
Passengers	1	44
Employees	2	134
Others	29	44
Totals	32	222

DETAILS OF ACCIDENTS AT HIGHWAY CROSSINGS

NOVA SCOTIA

Accidents	K.	I.	
1	—	1	Auto truck struck by track motor car. Licence N.S. C-12421.

NEW BRUNSWICK

1	—	1	Automobile drove onto crossing in front of approaching train and was struck. Licence not given.
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QUEBEC

1	1	—	Automobile drove onto crossing in front of approaching train and was struck. Licence Que. 164289.
1	—	5	Automobile drove onto crossing in front of approaching train and was struck. Licence Que. 78462.
1	—	1	Auto truck drove onto crossing in front of approaching train and was struck. Licence Que. F-22675.
1	—	1	Automobile drove onto crossing in front of approaching train and was struck. Licence Que. 3-170.
1	—	1	Auto bus drove onto crossing in front of approaching train and was struck. Licence Que. A-996.
1	—	1	Automobile struck yardman protecting crossing. Licence Que. 171-059.
1	—	1	Pedestrian passed under gates in lowered position and was struck by train.
1	—	4	Automobile struck track motor car. Licence Que. 167171.

DETAILS OF ACCIDENTS AT HIGHWAY CROSSINGS—*Concluded*

ONTARIO

- | | | | |
|---|---|---|--|
| 1 | — | 2 | Auto truck and trailer drove onto crossing in front of approaching train and was struck. Licence Ont. 37034-C. |
| 1 | — | 1 | Automobile drove onto crossing in front of approaching train and was struck. Licence Ont. 612-Z-5. |
| 1 | — | 2 | Auto truck drove onto crossing in front of approaching train and was struck. Licence Ont. C-3122. |
| 1 | — | 1 | Automobile drove onto crossing in front of approaching train and was struck. Licence Ont. 263-C-3. |
| 1 | 4 | 2 | Auto truck drove onto crossing in front of approaching train and was struck. Licence Ont. 44212-C. |
| 1 | — | 3 | Automobile ran into side of train. Licence Ont. 5-E-534. |

MANITOBA

- | | | | |
|---|---|---|---|
| 1 | 1 | 1 | Auto truck drove onto crossing in front of approaching train and was struck. Licence Man. T-8418. |
| 1 | 1 | — | Child ran onto crossing in front of approaching train and was struck. |

SASKATCHEWAN

- | | | | |
|---|---|---|--|
| 1 | — | 1 | Auto truck struck by track motor car. Licence Sask. D-104. |
| 1 | — | 1 | Auto truck struck by track motor car. Licence Sask. C-4777. |
| 1 | — | 5 | Automobile ran into side of train. Licence Sask. 85622. |
| 1 | — | 1 | Automobile drove onto crossing in front of approaching train and was struck. Licence Sask. 15836. |
| 1 | 1 | — | Auto truck drove onto crossing in front of approaching train and was struck. Licence Sask. F-11-240. |

ALBERTA

- | | | | |
|---|---|---|--|
| 1 | — | 1 | Auto truck ran into side of train. Licence Alta. CB-7649. |
| 1 | 4 | 2 | Automobile drove onto crossing in front of approaching train and was struck. Licence Alta. 22-717. |
| 1 | 1 | — | Automobile drove onto crossing in front of approaching train and was struck. Licence Alta. 34-120. |
| 1 | 1 | — | Auto truck drove onto crossing in front of approaching train and was struck. Licence Alta. F-20-084. |

Of the 27 accidents at highway crossings, 22 occurred at unprotected crossings and 5 at protected crossings. Twenty-three of the accidents occurred after sunrise and four after sunset.

November 2nd, 1944.

SUMMARY OF ORDERS ISSUED BY THE BOARD

- | | | |
|-------|----------|---|
| 65334 | Oct. 16— | Authorizing C.P.R. to construct branch line of railway to serve Canadian Collieries (Dunsmuir) Limited at mileage 63·23 Victoria Subdivision, Vancouver Island, B.C. |
| 65335 | Oct. 16— | Authorizing C.P.R. to construct branch line of railway to serve J. E. Benny at mileage 0·53 and Standard Sand & Gravel Limited at mileage 16·15 St. Gabriel Subd., Joliette, P.Q. |
| 65336 | Oct. 18— | Declaring C.N.R. crossing of the highway, third crossing west of Victoria-ville Station, Que., protected to Board's satisfaction. |
| 65337 | Oct. 18— | Declaring C.P.R. crossing of the highway, first crossing east of the east switch at Bankhead, Alta., protected to Board's satisfaction. |
| 65338 | Oct. 18— | Declaring C.N.R. crossing of highway, first public crossing east of Billings Station, Ont., protected to Board's satisfaction. |
| 65339 | Oct. 19— | Approving clearances at C.N.Rys.' sidings serving the Lang Tanning Company Ltd., at Kitchener, Ontario. |
| 65340 | Oct. 19— | Authorizing C.P.R. to construct branch line of railway to serve Cady Lumber & Pole Co. Ltd. at Passmore, B.C. |

SUMMARY OF ORDERS ISSUED BY THE BOARD—*Continued*

- 65341 Oct. 18—Extending time within which to install two flashing light signals and pedestrian bell at crossing of Cawthra Road, Twp. of Toronto, Ont. (C.N.Rys.)
- 65342 Oct. 19—Authorizing C.P.R. to reconstruct bridge 0.9 over Henderson's Creek, Eganville Subd., Ont.,
- 65343 Oct. 19—Authorizing C.P.R. to reconstruct bridge 10.1 Eganville Subd., near Douglas, Ont.
- 65344 Oct. 20—Declaring C.N.R. crossing of highway, one-half mile east of Findley Station, Ont., protected to Board's satisfaction; protection to be provided by railway company while a train is on passing track.
- 65345 Oct. 18—Approving less than standard clearances on C.P.R. sidings serving Dewart Milling Co. Ltd. at Peterboro, Ont.
- 65346 Oct. 19—Authorizing C.P.R. to reconstruct bridge 4.9 over Hines Creek on Eganville Subd., Ont.
- 65347 Oct. 19—Approving location and details of C.N.R. station at Giroux, Man.
- 65348 Oct. 19—Declaring C.P.R. crossing of highway at mileage 36.1 Langdon Subd., Alta., protected to Board's satisfaction.
- 65349 Oct. 18—Authorizing C.N.R. to construct extension to spur along Southern Street, Vancouver, B.C., to serve Canadian Boxes Ltd.
- 65350 Oct. 19—Approving clearances at cinder drainage and disposal plant at Sudbury, Ont. (C.P.R.)
- 65351 Oct. 20—Declaring C.N.R. crossing of Caradoc St., Strathroy, Ont., protected to Board's satisfaction; switching movements on sidings over crossing to be flagged by member of train crew.
- 65352 Oct. 20—Dismissing application of Town of Gladstone, Man., for installation of additional protection at crossing of C.P.R. and C.N.Rys. at Morris Avenue.
- 65353 Oct. 20—Declaring C.N.R. crossing of Highway No. 13, third crossing east of St. Leonard Junction Station, Que., protected to Board's satisfaction; speed limitation of fifteen miles per hour to be maintained.
- 65354 Oct. 20—Authorizing C.P.R. to construct branch lines of railway to serve Milverton Milling Company Ltd. at mileage 66.84 Goderich Subd., Milverton, Ont.
- 65355 Oct. 23—Declaring C.N.R. crossing of Main Street, Uxbridge, Ont., protected to Board's satisfaction.
- 65356 Oct. 21—Appointing Commissioner Stoneman to sign orders and documents in the absence of the Chief Commissioner.
- 65357 Oct. 23—Approving location of pipe lines, etc., of The British American Oil Co. Ltd., near tracks of Northern Alberta Railways Co. at Grimshaw, Alta.
- 65358 Oct. 23—Approving location of pipe lines, etc., of Gas & Oil Products Ltd., near tracks of C.N.R. at Prince Albert, Sask.
- 65359 Oct. 23—Approving location of pipe lines, etc., of Imperial Oil Ltd., near tracks of C.N.R. at McBride, B.C.
- 65360 Oct. 23—Extending time within which to install two flashing light signals and one bell at crossing of Main St., Buckingham Junction, P.Q. (C.P.R.)
- 65361 Oct. 23—Declaring C.P.R. crossing of highway, Twp. of East York, Ont., protected to Board's satisfaction.
- 65362 Oct. 23—Approving under Maritime Freight Rates Act tolls published in tariffs filed by C.P.R. under Sec. 9.
- 65363 Oct. 23—Approving location of pipe lines, etc., of McColl-Frontenac Oil Co. Ltd., near tracks of C.N.Rys. at Brandon, Man.
- 65364 Oct. 24—Approving under Maritime Freight Rates Act tolls published in tariffs filed by C.P.R. under Sec. 9.
- 65365 Oct. 24—Declaring C.N.R. crossing of highway 2.18 miles east of Stouffville Station, Ont., protected to Board's satisfaction.
- 65366 Oct. 24—Declaring C.N.R. crossing of Parkdale Avenue, Hamilton, Ont., protected to Board's satisfaction.
- 65367 Oct. 20—Declaring C.P.R. crossing of Crown Street, second west of Quebec City Station, P.Q., protected to Board's satisfaction; present speed limitation of ten miles per hour to be maintained.
- 65368 Oct. 25—Approving under Maritime Freight Rates Act tolls published in tariffs filed by C.P.R. under Sec. 9.
- 65369 Oct. 24—Authorizing Dept. of Roads of the Province of Quebec to construct level highway crossing of Route No. 17 over C.P.R. in Municipality of the Parish of Ste. Madeline de Rigaud, Que.

SUMMARY OF ORDERS ISSUED BY THE BOARD—*Concluded*

- 65370 Oct. 25—Declaring C.N.R. crossing of highway, first north of Big Valley Station, Alta., protected to Board's satisfaction.
- 65371 Oct. 25—Declaring C.N.R. crossing of highway at mileage 89·32 Preeceville Subd., Sask., protected to Board's satisfaction.
- 65372 Oct. 25—Relieving C.P.R. from maintaining cattle guards at highway crossing at mileage 98·53 Chalk River Subd., Ont.
- 65373 Oct. 27—Declaring C.N.R. crossing of highway, 348 feet east of Medstead Station, Sask., protected to Board's satisfaction.
- 65374 Oct. 26—Authorizing C.P.R. to operate its trains over connection with C.N.R. at mileage 20·0 Parry Sound Subd., Ont.
- 65375 Oct. 26—Authorizing C.P.R. to construct level highway crossing west of intersection of Narcisse St., Salmon Arm, B.C.
- 65376 Oct. 27—Declaring C.N.R. crossing of Jonquiere-Arvida Highway, first crossing north of Chauvigny Yard, St. Dominique de Jonquiere, Que., protected to Board's satisfaction.
- 65377 Oct. 27—Declaring C.N.R. crossing of highway, first public crossing west of Rose-town Station, Sask., protected to Board's satisfaction.
- 65378 Oct. 27—Declaring C.N.R. crossing of highway, first west of Delisle Station, Sask., protected to Board's satisfaction.
- 65379 Oct. 27—Approving under Maritime Freight Rates Act tolls published in tariffs filed by C.N.R. under Sec. 3.
- 65380 Oct. 27—Declaring C.P.R. crossing of Pasqua Street, Regina, Sask., protected to Board's satisfaction.
- 65381 Oct. 31—Declaring C.N.R. crossing of highway at mileage 58·5 Bedford Subd., N.S., protected to Board's satisfaction.
- 65382 Oct. 31—Approving under Maritime Freight Rates Act tolls published in tariffs filed by C.N.R. under Sec. 3.
- 65383 Oct. 31—Authorizing C.P.R. to construct branch line of railway to serve Burns & Co., Ltd., at Mile 92·4 Indian Head Subd., Regina, Sask.
- 65384 Oct. 31—Authorizing C.P.R. to construct branch line of railway to serve Lealand Company Ltd. at mileage 80·10 Windsor Subd., Twp. of Tilbury North, Ont.
- 65385 Oct. 31—Declaring D.A.R. crossing of First Avenue, one mile east of Digby Station, N.S., protected to Board's satisfaction; present speed limitation of ten miles per hour to be maintained.
- 65386 Oct. 31—Declaring C.N.R. crossing of highway, first crossing just west of Joly Station, Que., protected to Board's satisfaction.
- 65387 Oct. 31—Authorizing C.N.R. to install two wigwags and one bell, etc., at crossing of Norwich Street, Woodstock, Ont., mileage 49·05 Dundas Subd.
- 65388 Nov. 1—Declaring C.N.R. crossing of highway, 35 feet south of shelter building at Gayton, N.B., protected to Board's satisfaction.
- 65389 Oct. 31—Declaring C.P.R. crossing of Provincial Highway No. 7, near Andover, N.B., protected to Board's satisfaction.
- 65390 Nov. 1—Declaring C.P.R. crossing of St. Patrick Street, at Cote St. Paul, Montreal, Que., protected to Board's satisfaction.
- 65391 Oct. 31—Approving location of pipe lines, etc., of Imperial Oil Ltd., near tracks of C.N.R. at Stony Plain, Alta.
- 65392 Nov. 1—Approving location of C.N.Rys.' station at Otonagon, Sask.
- 65393 Nov. 1—Authorizing C.N.R. to install additional wigwag signal at crossing of Wilson Street, Woodstock, Ont.
- 65394 Nov. 1—Authorizing C.P.R. to construct branch line of railway to serve Dept. of National Defence (Naval Service) at Kamloops, B.C.
- 65395 Nov. 2—Approving location of pipe lines of Imperial Oil Ltd. near tracks of C.P.R. at Taber, Alta.
- 65396 Nov. 3—Appointing Commissioner Stoneman to sign orders and documents in the absence of the Chief Commissioner.
- 65397 Nov. 2—Approving location of pipe lines, etc., of Imperial Oil Limited near tracks of Northern Alberta Railways Co. at Sexsmith, Alta.
- 65398 Nov. 2—Approving location of pipe lines, etc., of Imperial Oil Ltd. near tracks of C.N.R. at Hanna, Alta.
- 65399 Nov. 2—Approving under Maritime Freight Rates Act tolls published in tariffs filed by C.P.R. under Sec. 9.

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The Board of Transport Commissioners for Canada

Judgments, Orders, Regulations and Rulings

Vol. XXXIV

Ottawa, December 1, 1944

No. 17

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Application of the Rural Municipality of Whitemouth, of Whitemouth, Manitoba, for an Order directing the Canadian Pacific Railway Company to clean out its ditches on both sides of its right of way running through the south east quarter of Section 31, in Township 11, Range 12, East of the Principal Meridian and adjacent lands, in the Rural Municipality of Whitemouth, in the Province of Manitoba.

File No. 43806

Mr. H. A. V. GREEN, K.C., and Mr. I. B. SINCLAIR, appeared for the Canadian Pacific Railway Company.

Mr. E. HENDERSON, Reeve, and Mr. W. J. McLEAN, Secretary-Treasurer of the Rural Municipality of Whitemouth, appeared for the Municipality.

Heard at Winnipeg, Man., September 5, 1944

JUDGMENT

STONEMAN, COMMISSIONER:

A perusal of the file shows that this matter was first brought to the attention of the Board on August 13, 1943, by a letter from the Secretary-Treasurer of the Rural Municipality of Whitemouth. A copy of the letter was sent by the Board to the Canadian Pacific Railway Company and they were asked for their submissions with regard to the complaint. The submissions of the Railway Company were filed September 17, 1943.

The Board's District Engineer was then directed to make an inspection and report to the Board. This report was received November 5, 1943, advising that when making the inspection he was accompanied by the Division Engineer of the Canadian Pacific Railway Company, the Reeve of the Municipality of Whitemouth, and the owners of the lands affected. After consideration of the report the Secretary-Treasurer of the Rural Municipality of Whitemouth was written to November 23, 1943, in terms of the following:—

"Referring to the above mentioned application, I am directed to advise that following the inspection, the Board's District Engineer stated that he could see no evidence on the ground that the existing ditches had been filled during the time that rock ballast was placed on the railway, that the natural drainage is from east to west and the railway does not interrupt the said drainage.

"The Board's District Engineer has further advised that at the time of inspection, the ground was perfectly dry without water lying in the ditches, but that it was then stated in some years there was a very heavy flow. In view of the latter statement, if your Municipality will advise Colonel Parks, District Engineer, 525 Calgary Public Building, Calgary, Alta., when the ditches are running full and the flooding condition complained of is in evidence, he will endeavour to make an inspection at that time."

Letters received in the Spring of 1944 would indicate that the snow-fall had been very light and it was felt that the flow of water would not be such that further inspection by the Board's District Engineer would reveal anything other than what had been seen when the inspection was made in the Fall of 1943.

On May 9, 1944, the Secretary-Treasurer of the Rural Municipality of Whitemouth wrote the Board's District Engineer asking that an inspection of the C.P.R. ditches be made as soon as possible.

In a report to the Board, dated May 27, 1944, the Board's District Engineer states—

"It had been raining heavily in this vicinity for the last couple of days and there was a very small amount of water running in these ditches, but owing to lack of snow and a very dry winter it was stated that there was no run-off this Spring. There was no flooding of cultivated land from these ditches along the railway this Spring."

In the last paragraph of the report, the District Engineer concludes by saying—

"I am therefore of the opinion that the C.P.R. has carried out the provisions of the Railway Act. I cannot see why they should deepen their drain and provide a gradient that would relieve these farmers of draining their land. I am, therefore, of the opinion that this case should be dismissed."

On June 1, 1944, the Clerk of the Rural Municipality of Whitemouth was advised, as follows:—

"File 43806. Application of the Rural Municipality of Whitemouth, Man., for an Order directing the C.P.R. Co. to clean out its ditches on both sides of its right of way running through the S.E. $\frac{1}{4}$ Sec. 31, Twp. 11, Rge. 12, E. in the Rural Municipality of Whitemouth, Man.

"Referring to the above mentioned application, I am directed to advise that after his inspection made on May 24th at which representatives of the Railway and the Municipality were present, the Board's District Engineer does not find the conditions complained of are the responsibility of the Railway Company and advises that the Railway is carrying out all the requirements of the Railway Act.

The application is dismissed."

On June 22, 1944, the Secretary-Treasurer of the Rural Municipality of Whitemouth again wrote the Board setting out conditions as viewed from the standpoint of the Municipality and requesting further consideration by the Board to its previous application. After consideration it was decided to put the matter down for hearing at the next sittings of the Board in the West. The matter was therefore listed for hearing and came before the Board at sittings held in Winnipeg, Man., September 5, 1944.

While the application of the Municipality is for an Order directing the Railway Company to clean out its ditches, when the matter was heard it became evident that in order to drain the lands affected it would be necessary to deepen and widen the ditches. In support of the application the Municipality alleges that prior to the construction of the railway the natural drainage of the land in the area through which the railway is built was from the south in a North-westerly direction eventually reaching the Whitemouth River, which runs from South to North—the level of the river being about 25 feet below the level of the surrounding country—that the railway embankment acts as a dam and is the cause of flooding certain lands, particularly in Sections 30 and 31, Township 11, Range 12, East of the First Meridian, which have been brought under cultivation as farm lands in recent years; most of the land affected being south of the railway right of way; that the construction of the railway ditches each side of the embankment brings water from the east for at least a mile and a half that originally drained in a northerly direction, resulting in a diversion of water from its natural outlet and therefore causing the condition complained of.

Exhibit No. 2 is a small map of the Municipality of Whitemouth showing the location of the railway lines, rivers and streams, but does not show any levels thereon in support of the evidence as to the direction of the natural flow of water.

Mr. McLean, Secretary-Treasurer of the Municipality, in giving evidence, at page 1043 of the record, states:—

“It would appear, as Mr. Henderson said, that the natural flow of the water is towards the north to reach the Whitemouth River and, although we have not the levels of the land on each side of this railway, there is considerably more water on the south side than on the north side. It appeared that way to me from looking at it with my eyes.

The CHIEF COMMISSIONER: “Do you know where the water comes from on the south side?”

Mr. McLEAN: “It appears to come from a south easterly direction.”

Originally the land was covered with moss or peat to a depth of $1\frac{1}{2}$ to 2 feet, which has within recent years been burnt off, lowering the surface of the land to that extent. This is admitted by those representing the Municipality as well as being shown in reports of our District Engineer. Submissions filed in answer to the complaint, correspondence on the file and the evidence of the railway representatives at the sittings corroborated this fact.

Mr. Wilcox, Divisional Engineer for the Canadian Pacific Railway Company at Kenora, was in charge of this section of the railway in 1910 for a period of about three years, came back in 1920 for a period of ten years, and again returned in 1941. He is now Divisional Engineer in charge of this section. He knows the country well and describes the land as being muskeg saturated with water. He states that there was practically no outlet for the water from these low lying lands except by way of evaporation until the Railway Company's ditches were opened up to the Whitemouth River. He states that the natural flow of the water has always been from East to West and the effect of the ditches being dug along the railway right of way has been to partially drain this muskeg which otherwise would have no outlet.

The Railway Company in answer to the complaint, filed, as Exhibit No. 1, a plan of the area showing levels taken by Mr. Wilcox. These show the levels in the bottom of the ditch on each side of the railway right of way, the ground levels at the right of way fences, and the present levels of the surface of the

ground outside the railway right of way fence. The levels show that where the muskeg was burnt off the farms outside the railway fence on the south side the land is more than a foot lower than the levels at the fence. In fact, in some places, the burnt off land is lower than the railway ditches. From the plan, as filed, and the evidence of the Railway Company's Engineer, I think it is clear the track of the railway follows the slope of the country across which it is built—the land sloping from east to west as does the grade of the railway. The Whitemouth River runs from south to north and the railway line from east to west; the River being about 25 feet below the level of the surrounding country where the railway crosses. The country is not entirely flat. There is a fall of about 45 feet in 3 miles and a fall from east to west across the southeast quarter of Section 31-11 of approximately 1 inch to 100 feet. The ditches were originally borrow pits from which the muskeg was obtained for construction of the railway embankment, and were afterwards inter-connected to drain the railway embankment; the railway no doubt being constructed on top of the muskeg as is customary in this type of terrain.

The contention of the applicant is that it is the duty of the Railway Company to lower the ditches sufficiently to drain the low lying land in question. If such a duty is imposed it must be by section 268 of the Railway Act. That Section is as follows:—

“The Company shall in constructing the railway make and maintain suitable water pipes, flumes, ditches and drains along each side of, and across and under the railway, to connect with water pipes, flumes, ditches, drains, drainage works and water-courses upon the lands through which the railway runs, so as to afford sufficient outlet to drain and carry off the water, or to convey the water supply, and so that the then natural, artificial, or existing drainage, or water supply, of the said lands shall not be obstructed or impeded by the railway.”

It is clear that in order to succeed the applicant must show that the railway has obstructed or impeded the drainage existing at the time the railway was constructed. I think that the evidence before the Board does not support the applicant's contention, but shows that the company provided drainage sufficient to take care of the situation as it existed at the time the railway was constructed, and that the company has since maintained such drainage. By so doing the company has fulfilled all its obligations under Section 268 of the Railway Act. (*Orford v. M.C.R.R.*, 12 J.O.R. 155, at 158; *East Kildonan v. C.P.R.*, 27 C.R.C. 360.) The application must therefore be dismissed.

OTTAWA, November 2, 1944.

J. A. STONEMAN.

I concur,

J. A. CROSS.

F. M. MACPHERSON.

ORDER No. 65429

In the matter of the application of the Rural Municipality of Whitemouth, Manitoba, hereinafter called the "Applicant", for an Order directing the Canadian Pacific Railway Company to clean out its ditches on both sides of its right of way running through the Southeast Quarter of Section 31, in Township 11, Range 12, East of the Principal Meridian, and adjacent lands, in the said municipality.

File No. 43806

FRIDAY, the 10th day of November, A.D. 1944.

J. A. CROSS, K.C., *Chief Commissioner.*J. A. STONEMAN, *Commissioner.*F. M. MACPHERSON, *Commissioner.*

Upon hearing the application at the sittings of the Board held at Winnipeg on the 5th day of September, 1944, in the presence of Counsel for and representatives of the Applicant and the Railway Company, and what was alleged—

It is ordered: That the application be, and it is hereby, dismissed.

J. A. STONEMAN,
Commissioner.

ORDER No. 65409

In the matter of the application of the Niagara, St. Catharines & Toronto Railway Company, hereinafter called the "Applicant Company", under Section 334 of the Railway Act, for approval of its Standard Passenger Tariff C.T.C. No. 500, on file with the Board under,

File No. 34322

FRIDAY, the 3rd day of November, A.D. 1944.

J. A. CROSS, K.C., *Chief Commissioner.*HUGH WARDROPE, *Assistant Chief Commissioner.*J. A. STONEMAN, *Commissioner.*G. A. STONE, *Commissioner.*

Upon the recommendation of the Assistant Director, Traffic Department of the Board—

It is ordered: That the Applicant Company's Standard Passenger Tariff C.T.C. No. 500, effective December 1, 1944, on file with the Board under file No. 34322, be, and it is hereby, approved; the said tariff, with a reference to this Order, to be published in at least two consecutive weekly issues of the *Canada Gazette*.

J. A. CROSS,
Chief Commissioner.

GENERAL ORDER No. 667

In the matter of the General Orders of the Board Nos. 663 and 664, dated respectively June 29, 1944, and August 3, 1944, amending the Regulations for the Transportation of Explosives and Other Dangerous Articles by Freight by providing temporary release from paragraph 21-4 regarding reused containers.

File No. 1717.88.17

MONDAY, the 6th day of November, A.D. 1944.

J. A. CROSS, K.C., *Chief Commissioner.*

HUGH WARDROPE, *Assistant Chief Commissioner.*

J. A. STONEMAN, *Commissioner.*

G. A. STONE, *Commissioner.*

Upon the report and recommendation of the Director of Operation of the Board—

It is ordered: That the said General Orders No. 663 dated June 29, 1944, and No. 664 dated August 3, 1944, be, and they are hereby rescinded.

J. A. CROSS,

Chief Commissioner.

SUMMARY OF ORDERS ISSUED BY THE BOARD

- 65400 Nov. 2—Approving under Maritime Freight Rates Act tolls published in tariffs filed by C.P.R. under Sec. 9.
- 65401 Nov. 2—Declaring C.N.R. crossing of highway first west of Irma Station, Alta., protected to Board's satisfaction.
- 65402 Nov. 2—Declaring C.N.R. crossing of O'Brien Boulevard first north of Monkland Station, Montreal, Que., protected to Board's satisfaction.
- 65403 Nov. 3—Approving relocation of unloading standard of Imperial Oil Ltd., near tracks of C.N.R. at La Tuque, Que.
- 65404 Nov. 3—Approving location of pipe lines of Canadian Oil Companies, Ltd., near C.N.R. tracks at North Battleford, Sask.
- 65405 Nov. 6—Rescinding Order No. 43455, dated Sept. 13, 1929, *re* C.N.Rys. crossing of Racine and Jacques Cartier Streets, Chicoutimi, Que.
- 65406 Nov. 2—Approving C.N.R. plans showing temporary structure to be carried over and across Delorimier Ave., Montreal, Que.
- 65407 Nov. 3—Authorizing C.P.R. to construct spur to serve The Roche Percee Coal Mining Co. Ltd., at Roche Percee, Sask.
- 65408 Nov. 3—Authorizing C.P.R. to remove stock pen and siding at O'Dell Station, Ont.
- 65409 Nov. 3—Approving Niagara, St. Catharines & Toronto Railway Co's. Standard Passenger Tariff C.T.C. No. 500.
- 65410 Nov. 4—Authorizing the R.M. of Cameron, Man., to construct highway crossing over tracks of C.N.R. at mileage 85 Hartney Subd., near Argue Siding, Man.
- 65411 Nov. 6—Authorizing C.N.R. to close crossing of highway NW. 4, Sec. 23, Twp. 35, Rge. 17, W4M, Alta.
- 65412 Nov. 7—Approving agreement between The Bell Telephone Co. of Canada and The Lansdowne Rural Telephone Co., Ltd.
- 65413 Nov. 7—Dismissing application of the Municipal Council of the Town of Saint Jerome, County of Terrebonne, Que., to construct pedestrian crossing over tracks of C.P.R., mileage 13.74 Ste. Agathe Subd.
- 65414 Nov. 7—Approving C.P.R. plan showing installation of flashing light signals and bell at March Road, near Britannia, Ont.
- 65415 Nov. 6—Approving under Maritime Freight Rates Act tolls published in tariffs filed by C.P.R. under Sec. 9.
- 65416 Nov. 7—Declaring Toronto, Hamilton & Buffalo Railway crossing of Ottawa St., Hamilton, Ont., protected to Board's satisfaction.
- 65417 Nov. 8—Declaring C.N.R. crossing of St. Patrick Road, first east of Cantin Station, Que., protected to Board's satisfaction.
- 65418 Nov. 8—Declaring C.N.R. crossing of rue de l'Eglise first east of l'Islet Station, Que., protected to Board's satisfaction.
- 65419 Nov. 8—Declaring New York Central Railroad crossing of Beauce Road first crossing north of Beauharnois Station, Que., protected to Board's satisfaction.
- 65420 Nov. 8—Declaring C.P.R. crossing of highway first north of Nanton Station, Alta., protected to Board's satisfaction.
- 65421 Nov. 8—Authorizing C.P.R. to construct branch line of railway to serve Katchen Bros., at Calgary, Alta.
- 65422 Nov. 10—Approving location of pipe lines etc. of Imperial Oil Ltd. near tracks of C.P.R. at Red Deer, Alta.
- 65423 Nov. 13—Declaring C.P.R. crossing of Highway No. 11 first north of Paquin Station, Que., protected to Board's satisfaction.
- 65424 Nov. 13—Authorizing C.P.R. to reconstruct Bridge No. 19.46 Maniwaki Subd., over la Peche River, Wakefield, Que.
- 65425 Nov. 11—Authorizing C.P.R. to install two automatic flashing light signals and one bell at crossing of South Main Street, Sutton, Que.
- 65426 Nov. 13—Approving proposed location of unloading standard of Good Rich Refining Company Ltd. near C.N.R. tracks at Guelph, Ont.
- 65427 Nov. 13—Authorizing Commissioner John A. Stoneman, to sign regulations, orders, and other documents during the absence of the Chief Commissioner.
- 65428 Nov. 13—Approving location of pipe lines, etc., of Barringham Rubber Co., Ltd., near C.N.R. tracks at Oakville, Ont.

- 65429 Nov. 10—Dismissing application of R.M. of Whitemouth, Man., for Order directing C.P.R. to clean out ditches on sides of right of way in SE. 4, Twp. 11, Rge. 31, E.P.M.
- 65430 Nov. 13—Approving under Maritime Freight Rates Act tolls published in tariffs filed by C.N.R. under Sec. 3.
- 65431 Nov. 13—Approving location of pipe lines, etc., of Canadian Oil Companies Ltd. near C.N.R. tracks at Melfort, Sask.
- 65432 Nov. 13—Approving relocation of pipe lines, etc., of Imperial Oil Ltd. near C.N.R. tracks at Kamsack, Sask.
- 65433 Nov. 15—Approving agreement between The Bell Telephone Co. of Canada and The Cameron Telephone Co. Ltd., dated Sept. 9, 1937.
- 65434 Nov. 15—Authorizing C.P.R. to construct branch line of railway to serve Alberta Provincial Government at Camrose, Alta.
- 65435 Nov. 15—Authorizing Dept. of Public Works of Province of B.C. to construct level highway crossing over tracks of Esquimalt & Nanaimo Railway Co. at Mile 33.42 Port Alberni Subd., Vancouver Island, B.C.
- 65436 Nov. 15—Declaring C.N.R. crossing of highway fourth public crossing north of Chesley Station, Ont., protected to Board's satisfaction.
- 65437 Nov. 15—Declaring C.P.R. crossing of Mountain Ave., West Fort William Station, Ont., protected to Board's satisfaction.
- 65438 Nov. 15—Approving under Maritime Freight Rates Act tolls published in tariffs filed by C.N.R. under Sec. 3.
- 65439 Nov. 15—Approving revised sheets of Tariff C.T.C. No. 24 of British Columbia Telephone Co.
- 65440 Nov. 15—Approving agreement between The Bell Telephone Co. of Canada and The Little Britain Telephone Co., Ltd.
- 65441 Nov. 15—Authorizing R.M. of Antelope Park No. 322, Sask., to construct highway crossing over tracks of C.P.R. at mileage 31.13 Coronation Subd., Sask.
- 65442 Nov. 15—Amending Order No. 65405, dated November 6, 1944, *re* location of freight shed at crossing of Racine and Jacques Cartier Streets, Chicoutimi, Que.
- 65443 Nov. 15—Authorizing C.P.R. to construct branch line of railway to serve Peppler Bros., Ltd., at mileage 27.5 Walkerton Subd., Twp. of Bentinck, County of Grey, Ont.
- 65444 Nov. 15—Authorizing C.P.R. to construct branch line of railway to serve Manitoba Rolling Mill Company Ltd., at mileage 20.31 Winnipeg Beach Subd., Parish of St. Clements, Man.
- 65445 Nov. 15—Approving clearances at power plant building at Saint John, N.B. (C.N.R.).
- 65446 Nov. 15—Extending time within which to install flashing light signals and bell at crossing of Cawthra Road, Twp. of Toronto, Ont., (C.N.Rys.).
- 65447 Nov. 15—Extending time within which to install flashing lights and bell at C.N.Rys. crossing of Wellington Street, Aurora, Ont.
- 65448 Nov. 16—Authorizing C.N.R. to construct diversion of William Street over their tracks, in Hawkesbury, Ont.
- 65449 Nov. 16—Extending time within which to install flashing lights and bell at C.P.R. crossing of Regent Street, Sudbury, Ont.
- 65450 Nov. 17—Declaring Vancouver & Lulu Island Railway crossing of 15th Avenue, Vancouver, B.C., protected to Board's satisfaction.

The Board of Transport Commissioners for Canada

Judgments, Orders, Regulations and Rulings

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Ottawa, December 15, 1944

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GENERAL ORDER No. 668

In the matter of the application of The Express Traffic Association of Canada for permission to ship by express samples of smokeless powder for cannon from Nobel, Ontario, Canada, to Dahlgren, Virginia, United States of America.

File 1717.12.3

WEDNESDAY, the 29th day of November, A.D. 1944.

J. A. CROSS, K.C., *Chief Commissioner.*

HUGH WARDROPE, *Assistant Chief Commissioner.*

J. A. STONEMAN, *Commissioner.*

G. A. STONE, *Commissioner.*

Upon the recommendation of the Director of Operation of the Board—

It is ordered that the Regulations for the Transportation by Express of Acids, Inflammables, Oxidizing Substances, Samples of Explosives, etc., be, and they are hereby, amended by adding to paragraph numbered 26⁷/₈, page 8, of the said Regulations, as amended by General Orders Nos. 631, 637 and 660, dated respectively October 30, 1942, January 13, 1943, and March 10, 1944, the following:—

“During the present emergency, and until further Order of the Board, samples of smokeless powder for cannon (nitro-cellulose colloid single base and nitro-cellulose and nitro-glycerine double base powder) for testing purposes may be shipped by express from points in Canada to the International Boundary for export to Proving Grounds in the United States, when packed and shipped under the following conditions:—

“(1) Not more than 115 pounds net weight of powder in standard galvanized iron drums, with standard closure with rubber gasket;

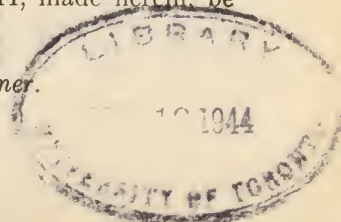
“(2) Not more than 10 above described drums shall be shipped on any one train on any one day;

“(3) No shipments shall be made in express cars which are equipped with stoves.”

2. That General Order No. 666, dated October 21, 1944, made herein, be and it is hereby, rescinded.

J. A. CROSS,

Chief Commissioner.



ACCIDENTS REPORTED TO THE OPERATING DEPARTMENT BOARD OF TRANSPORT COMMISSIONERS FOR CANADA, OCTOBER, 1944

Railway Accidents	182	with 13 killed and 209 injured
Level Crossing Accidents	31	with 8 killed and 41 injured
Totals	213	with 21 killed and 250 injured

	Killed	Injured
Passengers	—	32
Employees	5	171
Others	16	47
Totals	21	250

DETAILS OF ACCIDENTS AT HIGHWAY CROSSINGS

Accidents	K.	I.	
			NOVA SCOTIA
1	1	—	Auto truck drove onto crossing in front of approaching train and was struck. Licence not given.
			NEW BRUNSWICK
1	—	1	Auto truck ran into side of train. Licence, N.B. C-5884.
			QUEBEC
1	—	2	Auto truck ran into standing train. (Defective brakes.) Licence, Que. F-23542.
1	—	1	Automobile drove onto crossing in front of approaching train and was struck. Licence, Que. 75258.
1	—	2	Automobile drove onto crossing in front of approaching train and was struck. Licence, Que. 14544.
1	2	—	Auto truck drove onto crossing in front of approaching train and was struck. Licence, Que. F-2268.
1	—	1	Automobile ran into side of train. Licence, Ont. 2207.
1	—	2	Auto truck ran into side of train. Licence, Que. N-5333.
1	1	—	Automobile drove onto crossing in front of approaching train and was struck. Licence, Que. 75-131.
1	1	1	Automobile drove onto crossing in front of approaching train and was struck. Licence not given.
			ONTARIO
1	—	2	Automobile drove onto crossing in front of approaching train and was struck. Licence, Ont. 1-J-89.
1	1	—	Automobile drove onto crossing in front of approaching train and was struck. Licence, Ont. 44-T-97.
1	—	1	Automobile drove onto crossing in front of approaching train and was struck. Licence, Ont. 803-Z-4.
1	—	1	Automobile struck track motor car. Licence, Ont. BS-283.
1	—	1	Automobile ran into side of train. Licence, Ont. 5-P-379.
1	—	2	Automobile ran into side of train. Licence, Ont. 2-T-759.
1	—	1	Automobile drove onto crossing in front of approaching train and was struck. Licence, Ont. 854-B-3.
1	—	2	Automobile drove onto crossing in front of approaching train and was struck. Licence, Ont. 2274-X.
1	1	—	Automobile drove onto crossing in front of approaching train and was struck. Licence, Ont. 7-Z-421.
			MANITOBA
1	—	7	Automobile struck by track motor car. Licence not given.
1	—	1	Automobile struck side of box-car being pushed over crossing. Licence, Man. 53-352.
			SASKATCHEWAN
1	—	1	Auto truck ran into side of train. Licence, Sask. C-5-326.
1	—	2	Auto truck struck track motor car. Licence, Sask. E-317.
1	—	1	Auto truck drove onto crossing in front of approaching train and was struck. Licence, Sask. C-3016.

Accidents	K.	I.	ALBERTA
1	—	2	Auto truck ran into side of train. Licence, Alta. 30919.
1	—	1	Auto truck struck by train during switching operation. Licence, Alta. 12-796.
1	—	2	Automobile struck by water car of engine. Licence, Alta. 67-531.
1	—	1	Auto truck drove onto crossing in front of approaching train and was struck. Licence, Alta. PSV-5462.

BRITISH COLUMBIA

1	—	2	Automobile ran into side of train. Licence, B.C. 70-726.
1	1	—	Automobile drove onto crossing in front of approaching train and was struck. Licence, B.C. 80-352.
1	—	1	Automobile drove onto crossing in front of approaching train and was struck. Licence, B.C. 93-662.

Of the 31 accidents at highway crossings, 24 occurred at unprotected crossings and 7 at protected crossings. Seventeen of the accidents occurred after sunrise and fourteen after sunset.

November 30th, 1944

SUMMARY OF ORDERS ISSUED BY THE BOARD

- 65451 Nov. 13—Authorizing C.N.R. to install two automatic flashing light signals and bell at mileage 117.60 Quebec Subd., east of Lachevrotiere Station, Que.
- 65452 Nov. 22—Authorizing C.P.R. to construct branch line of railway to serve Le Comptoir Avicole at mileage 16.45 St. Gabriel Subd., Parish of St. Felix de Valois, Que.
- 65453 Nov. 22—Authorizing C.P.R. to construct branch line of railway to serve Canada Steamship Lines Limited dock and freight shed in Water Lot 1 east of Ontario Street, Kingston, Ont.
- 65454 Nov. 22—Authorizing C.P.R. to construct branch line of railway to serve F. C. Webb, at mileage 8.9 Galt Subd., Twp. of Etobicoke, County of York, Ont.
- 65455 Nov. 22—Authorizing C.N.R. to reconstruct bridge over Rosebud River at mileage 65.6 Drumheller Subd., Alta.
- 65456 Nov. 22—Authorizing C.P.R. to construct a public road crossing over its tracks on road allowance north of Sec. 12, Twp. 9, Rge. 3, and Sec. 7, Twp. 9, Range 4, E.P.M., R.M. of Ritchot, Man.
- 65457 Nov. 22—Declaring Vancouver and Lulu Island Railway crossing of 12th Avenue, Vancouver, B.C., protected to Board's satisfaction.
- 65458 Nov. 22—Declaring Vancouver and Lulu Island railway crossing of Moncton Street, being first crossing north of Steveston Station, B.C., protected to Board's satisfaction.
- 65459 Nov. 22—Declaring C.P.R. crossing of Provincial Highway No. 3 just east of St Thomas city limits, Ont., protected to Board's satisfaction.
- 65460 Nov. 22—Authorizing C.P.R. to construct branch line of railway to serve Connors Bros. Limited in Lot 229, Parish of Pennfield, County of Charlotte, N.B.
- 65461 Nov. 22—Authorizing C.N.R. to remove station building at Henfryn, Ont.
- 65462 Nov. 23—Approving under Maritime Freight Rates Act tolls published in tariffs filed by Canadian Freight Association under Sections 3 and 9.
- 65463 Nov. 22—Approving clearance of overhead trussed monorail on siding serving Maritime Steel & Foundries Ltd. at New Glasgow, N.S.
- 65464 Nov. 23—Declaring Lake Erie & Northern Railway crossing of the Boston Road at mileage 33 Port Dover to Galt Subd., Ont., protected to Board's satisfaction.
- 65465 Nov. 23—Authorizing C.N.R. to construct spur to serve Wm. Knechtel & Son Ltd. across the County Line Street, in Hanover, Ont.
- 65466 Nov. 27—Approving under Maritime Freight Rates Act tolls published in tariffs filed by C.N.R. under Sec. 3.
- 65467 Nov. 27—Extending time within which C.N. Ry. may install two flashing light signals and bell at crossing of 55th Ave., Lachine, Que.
- 65468 Nov. 27—Extending time within which Grand River Ry. may install four flashing light signals and two bells at crossing of Dundas and Beverly Streets, Galt, Ont.

- 65469 Nov. 27—Authorizing C.P.R. to construct branch line of railway to serve Prairie Vegetable Oils Ltd., at Moose Jaw, Sask.
- 65470 Nov. 27—Authorizing C.N.R. to use and operate bridge over Welland River at mileage 10·23 Welland Subd., Ont.
- 65471 Nov. 27—Authorizing Town of Iberville, Que., to construct pedestrian crossing over C.N.R. tracks connecting Bellerive Street and Tresidder Street, Iberville, Que.
- 65472 Nov. 27—Declaring C.P.R. crossing of North Street, Orillia, Ont., protected to Board's satisfaction; present speed limitation of ten miles per hour to be maintained.
- 65473 Nov. 27—Approving location of pipe lines, etc., of McColl-Frontenac Oil Company Ltd. near tracks of Quebec Central Railway Co. at Beauceville, Que.
- 65474 Nov. 28—Approving location of pipe lines, etc., of Imperial Oil Ltd. near tracks of C.P.R. Co. at Kyle, Sask.
- 65475 Nov. 28—Approving construction of two bridges over Riviere aux Chiens, Parish of Ste. Therese de Blainville, County of Terrebonne, Que. (C.P.R.)
- 65476 Nov. 29—Authorizing C.P.R. and C.N.R. to operate their engines, cars and trains over branch line of railway of the Toronto Harbour Commissioners serving Canada Coal Limited, Cherry Street, Toronto, Ont.
- 65477 Nov. 29—Approving location of pipe lines, etc., of McColl-Frontenac Oil Company, Ltd., near tracks of Nipissing Central Railway at Noranda, Que.
- 65478 Nov. 29—Declaring C.N.R. crossing of highway being first crossing east of passenger shelter at Doonside, Sask., protected to Board's satisfaction.
- 65479 Nov. 29—Declaring C.P.R. crossing of highway first crossing east of Stettler Station, Alta., protected to Board's satisfaction; present speed limitation of ten miles per hour to be maintained.
- 65480 Nov. 29—Declaring C.N.R. crossing of highway first east of station at Woodnorth, Man., protected to Board's satisfaction.
- 65481 Nov. 29—Declaring C.N.R. crossing of Thomas Street, south of Bracebridge Station, Ont., protected to Board's satisfaction.
- 65482 Nov. 29—Declaring C.P.R. crossing of Mountain Street second west of station at Morden, Man., protected to Board's satisfaction.
- 65483 Nov. 29—Approving location of pipe lines, etc., of Imperial Oil Ltd., under tracks of C.P.R. Co. at Regina, Sask.
- 65484 Nov. 29—Authorizing Quebec Central Railway Co. to install two flashing lights and one bell at crossing of Angus Street, East Angus, Que.

The Board of Transport Commissioners for Canada

Judgments, Orders, Regulations and Rulings

Vol. XXXIV

Ottawa, January 1, 1945

No. 19

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Application of the Canadian National Railways for authority to close as an agency their station at St. Laurent, Manitoba.

(File No. 4205.12)

A. K. DYSART and W. J. B. GRIERSON for the Canadian National Railways.
S. SIGFUSSON, M.L.A., and F. GRATTON for the Municipality of St. Laurent.

JUDGMENT

MACPHERSON, COMMISSIONER:

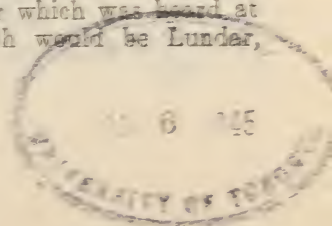
St. Laurent is located on the Oak Point Subdivision over which is operated a tri-weekly passenger train service leaving Winnipeg at 12.15 p.m., Monday, Wednesday and Friday, and returning leaving St. Laurent at 11.16 a.m., arriving in Winnipeg at 1.25 p.m., on Tuesday, Thursday and Saturday.

The urban population is close to 450, and the rural population about 900 according to evidence submitted by the railways. The tributary area extends 12 to 15 miles east, 4 miles north, 6 to 7 miles south and 1 2 mile west.

The business establishments consist of five general stores, creamery, cheese factory, blacksmith shop, hotel and garage. The headquarters of St. Laurent Municipality is located here. There is also an Oblate Novitiate with 15 to 20 students, and a Convent with about 176 pupils.

St. Laurent is located on the east shore of Lake Manitoba, and fishing and dairying are the main industries. Considerable quantities of hay and cordwood are shipped from this point.

The nearest agency stations are Warren 26.6 south and Oak Point 7.5 north by railway. If Oak Point is closed, application for which was heard at the same time as this, the nearest agency to the north would be Lunder, 20.7 miles distant.



St. Laurent is located on a provincial gravelled highway 55 miles north of Winnipeg. A daily passenger bus and also a regular trucking service is operated over this highway between Winnipeg and St. Laurent, and really provides a more convenient service than does the railway. The bulk of the fresh fish, butter, eggs, cheese and cattle are moved out of the district by truck.

It is also stated that while the trucks and buses have provided the principal means of transportation for the district, the shortage of gasoline, tires and labour has resulted in even this service being curtailed to an extent, the population thus becoming more dependent on the rail service for transportation.

Up to the end of September, 1943, 905 cords of wood and 1,262 tons of hay had moved over the railway, while for all of 1942 only 180 cords of wood and 486 tons of hay were moved over the railway.

I would point out that in the figures furnished by the railway gross earnings at Oak Point were higher than at St. Laurent, neither of these two stations meeting the requirements of Board's General Order No. 119, but the received freight earnings at St. Laurent are higher than at Oak Point. On the other hand, the freight and express forwarded earnings are better at Oak Point. This may be accounted for in ice shipments to Winnipeg and also some hay shipments to Eastern Canada during the last three years under review. The reason for higher forwarded express earnings at Oak Point is accounted for by cream shipments, while similar shipments from St. Laurent are practically non-existent as there is a local creamery and cheese factory at St. Laurent. The higher passenger business and inward freight business and express business at St. Laurent is attributable to the fact that the area at this point is more densely populated than at Oak Point, so taking all this into consideration I am of the opinion that the agent at St. Laurent is providing more essential service to the public than is the agent at Oak Point, in fact more real service to the public than at some of the grain shipping centres on the Prairies where the revenue from grain shipments constitutes the bulk of the earnings. Also in this connection, and as pointed out in the judgment dealing with the Oak Point application, the agent at this point performs a great deal more service than an agent at some Prairie station where the elevator man does most of the ordering of cars and looks after all the details connected with the shipping of grain, which is the chief commodity at most of these stations, while at a point such as St. Laurent the individual shipper has to do this work himself and has to look to the agent for assistance in the ordering of cars and the billing of same. Demurrage also is likely to result at a point such as this where there is no agent as the agent is in a position to keep close check on this feature. The way-freight in this division only operates two days a week in each direction.

I, therefore, am of the opinion that the closing of St. Laurent agency would in this instance cause more public inconvenience than would the closing of the agency at Oak Point, and for the reasons I have stated, I would dismiss the application of the Canadian National Railways to close the agency at St. Laurent.

Order to go accordingly.

November 29, 1944.

F. M. MACPHERSON.

I concur—

J. A. CROSS

J. A. STONEMAN

ORDER No. 65515

In the matter of the application of the Canadian National Railways for an Order, under the provisions of General Order No. 119, authorizing them to close as an agency their station at St. Laurent, Manitoba.

File No. 4205.12

MONDAY, the 11th day of December, A.D. 1944.

J. A. CROSS, K.C., *Chief Commissioner.*J. A. STONEMAN, *Commissioner.*F. M. MACPHERSON, *Commissioner.*

Upon hearing the application at the sittings of the Board held in Winnipeg, Manitoba, on the 5th day of September, 1944, in the presence of Counsel for and representatives of the Railway Company and the Municipality of St. Laurent, and what was alleged—

It is ordered: That the application be, and it is hereby, dismissed.

J. A. CROSS,
Chief Commissioner.

Application of the Canadian National Railways for an Order authorizing them to close as an agency their station at Oak Point, Man.

(File No. 4205.1210)

A. K. DYSART and W. J. B. GRIERSON for the Canadian National Railways.
C. E. WOOD, H. B. THORBALDSON and
S. SIGFUSSON, M.L.A., for the Municipality of Oak Point.

JUDGMENT

MACPHERSON, COMMISSIONER:

Oak Point is located on the Oak Point Subdivision of the Canadian National Railways, sixty-five miles by road north of Winnipeg. Train service consists of a tri-weekly passenger train leaving Winnipeg at 12.15 p.m. Monday, Wednesday and Friday, and arrives at Oak Point at 2.50 p.m., returning Tuesday, Thursday and Saturday, leaving Oak Point at 11.00 a.m., and arriving in Winnipeg at 1.25 p.m.

The urban population is about two hundred, and the rural population about six hundred. The tributary area extends twelve miles east, six miles north, three miles south and one-quarter mile west.

The places of business consist of three general stores, post office, garage, hotel, two restaurants, boarding-house, pool room, confectionery store and blacksmith shop.

Oak Point is situated on the shore of Lake Manitoba, and dairying and fishing are the main industries of the district. There is no grain shipped from this point, but there are a number of good hay meadows, and a considerable amount of hay is shipped to the Winnipeg market. Ice from Lake Manitoba is shipped in the winter months. There is some wood also shipped from this point.

The distance by road to open agencies is 8 miles south to St. Laurent or 34.6 miles south to Warren if the application to close the station at St. Laurent is granted, and 13.3 miles north to Lundar. There are no rural telephones in the district, but there are three Manitoba Telephone System phones in the village

Witnesses at the hearing stated that the removal of the agent at this station would result in considerable hardship in the handling of cream shipments especially in the winter months as some of the shippers have to travel twelve to sixteen miles to the station, coming in the night before and putting their cream in the station. If the agent is removed there would be no one to handle these shipments, and it would mean that the shipper would have to leave early in the morning to be at the train which arrives at 11.00 a.m.

They also spoke of the difficulty of ordering cars for cordwood and hay shipments. They expect an increase in these shipments as there is an increase in demand for same.

The shortage of help on the farms was also stressed, which they maintained was just as vital to them as the shortage of agents and telegraphers as submitted by the railway.

Oak Point is situated on a gravelled highway sixty-five miles north of Winnipeg. A daily bus service operates through the territory each morning arriving in Winnipeg about noon, and leaving Winnipeg in the evening. This bus is handling at the present time the bulk of the passenger traffic between Winnipeg and Oak Point. A regular trucking service is also operated between these two points over this highway.

The earnings at Oak Point are considerably lower than the amount required by General Order No. 119, and there is no doubt that highway transportation handles the bulk of the business between these two points, particularly passenger. Fresh milk and cream, butter and livestock, some hay and wood also move by truck.

However, it will be observed from the railway submissions that the inward freight earnings and the express earnings (both received and forwarded) are comparatively high, in fact higher than at some points where similar applications in the grain growing districts have failed recently.

The reason for the small gross earnings compared with some grain shipping points is that there is no grain shipped from Oak Point. The revenue from freight forwarded at this point is largely from hay and wood, charges on which are only \$22.00 and \$18.00 per car, respectively, to Winnipeg. The agent at a point like this performs considerable more service to the public than at some grain shipping points on the Prairies where the revenue is higher. At these latter points the elevator man is usually the only one who contacts the agent, while at the station under consideration each individual shipper orders his own cars from the agent, and also the agent assists him in his billing of cars, as he is not familiar with the procedure. Demurrage is also apt to result if care is not taken in ordering cars, and the agent is in the position to help and advise. Incidentally, the way-freight only operates twice a week in each direction over this subdivision.

It has already been pointed out that in the case of Oak Point if this application were granted the nearest agency station north would be Lundar, which is 13.3 miles and St. Laurent which is 8 miles south, and notwithstanding the fact that the gross earnings are greater at Oak Point than at St. Laurent, it is my opinion that the removal of the agent at Oak Point would result in less public inconvenience than would the removal of the agent at St. Laurent. The inward freight and express shipments are not large, but the cream shipments are heavy. However, the train arrives at 11.00 a.m., and where necessary farmers should have no difficulty in bringing their shipments in to connect with the train. Furthermore, there are flag stations on this subdivision where cream shipments are much heavier than at Oak Point.

Having in mind all these features, and also being mindful of the need of agents and telegraphers at more important points, I am of the opinion that this application should be granted, with the understanding that a caretaker

be appointed to perform the customary duties. In granting this application, I have in mind the dismissal of the application to close St. Laurent station, for reasons which I will give when rendering judgment on the St. Laurent application.

Order to be issued accordingly.

November 29, 1944.

F. M. MACPHERSON.

I concur—

J. A. CROSS

J. A. STONEMAN

ORDER No. 65516

In the matter of the application of the Canadian National Railways, hereinafter called the "Applicants", for an Order, under the provisions of General Order 119, authorizing them to close as an agency their station at Oak Point, Manitoba.

File No. 4205.1210

MONDAY, the 11th day of December, A.D. 1944.

J. A. CROSS, K.C., *Chief Commissioner.*

J. A. STONEMAN, *Commissioner.*

F. M. MACPHERSON, *Commissioner.*

Upon hearing the application at the sittings of the Board held in Winnipeg, Manitoba, on the 5th day of September, 1944, in the presence of Counsel for and representatives of the Applicants and the Municipality of Oak Point, and what was alleged—

It is ordered: That the Applicants be, and they are hereby, granted leave to remove the station agent at Oak Point, Manitoba, subject to the condition that a caretaker be appointed to see that the station building is kept clean, and, when necessary, heated and lighted for the accommodation of passengers on the arrival and departure of trains, and to take care of L.C.L. freight and express shipments.

J. A. CROSS,
Chief Commissioner.

ACCIDENTS REPORTED TO THE OPERATING DEPARTMENT BOARD OF TRANSPORT COMMISSIONERS FOR CANADA, NOVEMBER, 1944

Railway Accidents	194	with 21 killed and 200 injured
Level Crossing Accidents	31	with 4 killed and 45 injured
Totals	<u>225</u>	<u>25</u> killed and <u>245</u> injured

	Killed	Injured
Passengers	1	18
Employees	11	171
Others	<u>13</u>	<u>56</u>
Totals	25	245

DETAILS OF ACCIDENTS AT HIGHWAY CROSSING

Accidents	K.	I.	QUEBEC
1	—	2	Automobile ran into side of train. Licence Que. 77378.
1	—	1	Automobile ran into side of train. Licence Que. 147234.
1	—	2	Auto Truck ran into side of train. Licence Que. F15919.
1	—	1	Automobile drove onto crossing in front of approaching train and was struck. Licence Que. 149-030.
1	—	3	Automobile struck track motor car. Licence Que. 123038.
1	1	—	Pedestrian walked onto track in front of approaching train and was struck.
			ONTARIO
1	—	2	Automobile drove onto crossing in front of approaching train and was struck. Licence Ont. 297-X-1.
1	—	2	Automobile ran into side of train. Licence Ont. 717-J-5.
1	—	1	Automobile drove onto crossing in front of approaching train and was struck. Licence Ont. 6-W-833.
1	—	2	Automobile ran into side of train. Licence Ont. 84-P-52.
1	1	—	Automobile drove onto crossing in front of approaching train and was struck. Licence Ont. 75-F-14.
1	—	4	Automobile ran into side of train. Licence not given.
1	—	2	Automobile drove onto crossing in front of approaching train and was struck. Licence not given.
1	—	1	Automobile drove onto crossing in front of approaching train and was struck. Licence Ont. 59-M-72.
1	1	—	Horse-drawn vehicle drove onto crossing in front of approaching train and was struck.
1	—	1	Auto Truck drove onto crossing in front of approaching train and was struck. Licence Ont. 33908-C.
1	—	3	Automobile ran into side of train. Licence Ont. 1-Y-409.
1	—	1	Auto Truck ran into side of train. Licence Ont. 43367-C.
1	—	1	Automobile drove onto crossing in front of approaching train and was struck. Licence Ont. K-5116.
1	—	1	Automobile ran into side of train. Licence Ont. 6-Y-569.
			MANITOBA
1	—	1	Automobile drove onto crossing in front of approaching train and was struck. Licence Man. 69255.
			SASKATCHEWAN
1	—	2	Automobile drove onto crossing in front of approaching train and was struck. Licence not given.
1	—	2	Auto Truck drove onto crossing in front of approaching train and was struck. Licence Sask. F-1936.
1	1	1	Automobile drove onto crossing in front of approaching train and was struck. Licence Sask. 59-225.
1	—	1	Automobile drove onto crossing in front of approaching train and was struck. Licence Sask. 26-777.
1	—	1	Army Truck drove onto crossing in front of approaching train and was struck. Licence Sask. 61765.
1	—	1	Automobile ran into side of train. Licence Sask. 1170.

Accidents K. I.

ALBERTA

- 1 — 1 Auto Truck drove onto crossing in front of approaching train and was struck. Licence not given.
 1 — 1 Auto Truck ran into side of train. Licence not given.

BRITISH COLUMBIA

- 1 — 2 Automobile struck Track Motor car. Licence B.C. 54742.
 1 — 2 Auto Truck drove onto crossing in front of approaching train and was struck. Licence not given.

Of the 31 accidents at highway crossings, 25 occurred at unprotected crossings and 6 at protected crossings. Fourteen of the accidents occurred after sunrise and seventeen after sunset.

December 19, 1944.

SUMMARY OF ORDERS ISSUED BY THE BOARD

- 65485 Dec. 1—Extending time within which C.N. Rys. may install flashing light signals and bell at crossing of Main Street, Palmerston, Ont.
 65486 Dec. 2—Declaring C.N.R. crossing of Main Street, first east of Dupuy Station, P.Q., protected to Board's satisfaction.
 65487 Dec. 4—Approving under Martime Freight Rates Act tolls published in tariffs filed by Dominion Atlantic Railway Co. under Sec. 9.
 65488 Dec. 4—Declaring C.N.R. crossing of Val d'Or Highway, first west of McWatters Station, P.Q., protected to Board's satisfaction.
 65489 Dec. 4—Approving under Maritime Freight Rates Act tolls published in tariffs filed by C.P.R. under Sec. 9.
 65490 Dec. 4—Declaring C.N.R. crossing of highway third west of McWatters Station, P.Q., protected to Board's satisfaction.
 65491 Dec. 5—Authorizing C.N.R. and C.P.R. to operate their trains through interlocking plant at crossing of C.N. Rys.' Lewvan Subd., Regina, Sask.
 65492 Dec. 5—Amending Order No. 63848, dated August 5, 1943, installing protection at highway crossing west of Eel River, N.B.
 65493 Dec. 5—Authorizing C.P.R. to construct branch line of railway to serve International Nickel Co., Ltd., at mileage 12·31 Nickel Subd., at Creighton, Ont.
 65494 Dec. 5—Amending Order No. 65410, dated November 4, 1944, re highway crossing at mileage 85 Hartney Subd., near Argue Siding, Man. (C.N. Rys.).
 65495 Dec. 5—Declaring C.P.R. crossing of William Street, Smith's Falls, Ont., protected to Board's satisfaction.
 65496 Dec. 5—Authorizing New York Central Railroad Co. to install two flashing light signals and bell at Metcalfe Street Crossing, St. Thomas, Ont.
 65497 Dec. 6—Authorizing C.N.R. and C.P.R. to operate their trains through interlocking plant at St. James Junction, near Winnipeg, Man.
 65498 Dec. 6—Authorizing New York Central Railroad Co. to make changes to interlocking plant at its crossing with C.N. Rys. at Canfield Junction, Ont.
 65499 Dec. 6—Authorizing C.N. Rys. and Edmonton Street Railway Co. to operate their trains and cars over crossing on 107th Avenue, Edmonton, Alta.
 65500 Dec. 6—Approving plan dated October 13th, 1944, showing changes to gates at crossing at DeCourcelles Street, Montreal, P.Q.
 65501 Dec. 6—Authorizing C.N.R. and C.P.R. to operate their trains through interlocking plant at crossing of their railways at Allenby Junction, Que.
 65502 Dec. 6—Declaring Pere Marquette Railway crossing of Seminole St., Windsor, Ont., protected to Board's satisfaction.
 65503 Dec. 6—Declaring Pere Marquette Railway crossing of highway first west of passing track switch at McGregor, Ont., protected to Board's satisfaction.
 65504 Dec. 6—Authorizing New York Central Railroad Co. to make changes to interlocking plant at its crossing with C.N.R. at Hagersville, Ont.
 65505 Dec. 6—Extending time within which to construct trackage at mileage 63·5 Heron Bay Subdivision, Peninsula, Ont. (C.P.R.)
 65506 Dec. 7—Declaring C.N.R. crossing of Albert Street between Chicago and Washington Avenues, Regina, Sask., protected to Board's satisfaction; speed limitation of ten miles per hour to be maintained.
 65507 Dec. 7—Declaring Pere Marquette Railway crossing of Provincial Highway No. 7 second west of St. Thomas Junction, Ont., protected to Board's satisfaction; speed limitation of ten miles per hour to be maintained and all switching movements over crossing to be protected by member of train crew.
 65508 Dec. 8—Declaring C.P.R. crossing of highway first west of Bourget Station, Ont., protected to Board's satisfaction.

- 65509 Dec. 8—Authorizing Dept. of National Defence, Naval Service, to construct water pipe under C.N.R. tracks at Prince Rupert, B.C.
- 65510 Dec. 8—Approving under Maritime Freight Rates Act tolls published in tariffs filed by C.N.R. under Sec. 3.
- 65511 Dec. 8—Amending Order No. 46743, dated June 4th, 1931, which authorizes C.N. Rys. crossing of certain highways and road allowances with their line of railway between Longue Pointe and Eastern Junction, Montreal, etc., Que.
- 65512 Dec. 9—Approving under Maritime Freight Rates Act tolls published in tariffs filed by C.P.R. under Sec. 9.
- 65513 Dec. 11—Approving under Maritime Freight Rates Act tolls published in tariffs filed by Sydney & Louisburg Railway Co. under Sec. 9.
- 65514 Dec. 11—Declaring C.N.R. crossing of Toll Gate Road, two miles west of Brantford, Ont., protected to Board's satisfaction.
- 65515 Dec. 11—Dismissing application of C.N.R. for order authorizing them to close their station at St. Laurent, Man.
- 65516 Dec. 11—Authorizing C.N.R. to remove station agent at Oak Point, Man., and appoint a caretaker.
- 65517 Dec. 11—Declaring C.N.R. crossing of highway first east of Watrous Station, Sask., protected to Board's satisfaction.
- 65518 Dec. 11—Declaring C.N.R. crossing of 7th Avenue, Regina, Sask., protected to Board's satisfaction; speed limitation of ten miles per hour to be maintained.
- 65519 Dec. 11—Declaring C.N.R. crossing of Ste. Cecile Street, Village of Bic, Que., protected to Board's satisfaction.
- 65520 Dec. 11—Approving location and details of new station building at Glentworth, Sask. (C.P.R. Co.)
- 65521 Dec. 11—Declaring C.N.R. crossing of King Street, Port Colborne, Ont., protected to Board's satisfaction; speed limitation of ten miles per hour to be maintained.
- 65522 Dec. 11—Approving under Maritime Freight Rates Act tolls published in tariffs filed by C.P.R. under Sec. 9.
- 65523 Dec. 11—Declaring C.N.R. crossing of highway just west of Trois Pistoles Station, Que., protected to Board's satisfaction.
- 65524 Dec. 11—Declaring Nipissing Central Railway crossing of Highway No. 66, Kirkland Lake Subdivision, Ont., protected to Board's satisfaction.
- 65525 Dec. 11—Authorizing C.P.R. to construct branch line of railway to serve Building Products Limited, mileage 0.53 South Bank Branch, Ville Lasalle, Que.
- 65526 Dec. 12—Authorizing C.P.R. to install additional safety devices at crossing of Kyle Street, Port Moody, B.C.
- 65527 Dec. 12—Authorizing C.P.R. to construct branch line of railway to serve R. Wallace & Sons Manufacturing Company, Twp. of Eaton, County of Compton, Que.
- 65528 Dec. 12—Authorizing C.P.R. to construct branch line of railway to serve Canadian Co-operative Wool Growers Limited, in City of Lethbridge, Alta.
- 65529 Dec. 12—Authorizing C.P.R. to construct branch line of railway to serve Canadian Celanese Limited, mileage 58.2 Drummondville Subd., Twp. of Grantham, County of Drummond, Que.
- 65530 Dec. 13—Approving under Maritime Freight Rates Act tolls published in tariffs filed by C.N.R. under Sec. 3.
- 65531 Dec. 13—Authorizing C.P.R. to construct branch line of railway to serve The Flintkote Company of Canada Ltd. at mileage 0.6 North Bank Branch, County of Jacques Cartier, Que.
- 65532 Dec. 13—Approving clearances at sidings serving Canada Packers Ltd. Drydock Spur, Saint John, N.B. (C.N. Rys.).
- 65533 Dec. 13—Declaring C.N.R. crossing of Maple Avenue first south of Consumers Glass Co. at St. Pierre, Que., protected to Board's satisfaction.
- 65534 Dec. 13—Declaring C.N.R. crossing of St. Athanase highway first east of St. Pascal Station, Que., protected to Board's satisfaction.
- 65535 Dec. 13—Declaring C.N.R. crossing of Cannon Street, Hamilton, Ont., protected to Board's satisfaction; speed limitation of ten miles an hour and protection by watchman to be maintained.
- 65536 Dec. 14—Approving location of pipe lines, etc., of Great Lakes Paper Company, Ltd. near tracks of C.N.R. at Valora, Ont.
- 65537 Dec. 15—Approving location of pipe lines, etc., of Imperial Oil Limited near tracks of C.P.R. at Blairmore, Alta.
- 65538 Dec. 15—Approving location of platform and building to be erected by C.P.R. at West Toronto, Ont.
- 65539 Dec. 16—Approving under Maritime Freight Rates Act tolls published in tariffs filed by Dominion Atlantic Railway Company under Sec. 9.
- 65540 Dec. 18—Authorizing C.P.R. to construct branch line of railway to serve the Commonwealth Plywood Company Ltd. at mileage 19.7 Park Avenue Subd., Parish of Ste. Therese de Blainville, County of Terrebonne, Que.

The Board of Transport Commissioners for Canada

Judgments, Orders, Regulations and Rulings

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Joint application of Burns & Company Limited, Gainers Limited, Swift Canadian Company Limited, and Canada Packers Limited, for a ruling of the Board in the matter of switching charges imposed by the Canadian Pacific Railway Company and the Canadian National Railways on cars of Export Bacon when such cars held at shipping points in Western Canada awaiting shipping permits are iced by the Railways.

File No. 26113

Mr. A. E. HOSKIN, K.C., and Mr. H. P. GRUNDY, K.C., appeared for the Applicants;

Mr. D. O. OWENS, K.C., and Mr. A. K. DYSART for Canadian National Railways; and

Mr. H. A. V. GREEN, K.C., and Mr. I. D. SINCLAIR for Canadian Pacific Railway Company.

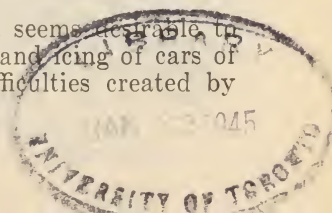
JUDGMENT

CROSS, CHIEF COMMISSIONER:

This is a joint application by Burns & Company, Limited, Gainers Limited, Swift Canadian Company Limited, and Canada Packers Limited, hereinafter sometimes called the applicants, for a ruling by the Board that the attempted imposition by Canadian Pacific Railway Company and Canadian National Railways, hereinafter sometimes called the Railways, of switching charges on cars of export bacon, when such cars held on railway tracks at shipping points in Western Canada awaiting shipping permits are iced by the Railways after the free time allowed under the Canadian Car Demurrage Rules has expired, is unfair, unreasonable and unjust, as the cost of the switching service is included in the price charged and collected by the Railways for ice supplied, and is illegal because it is in defiance of the judgment of the Board of Railway Commissioners for Canada, dated May 23, 1917 (Ontario Fruit Growers Association and Packing House Companies vs. Canadian Freight Association, Vol. VII, Board's J.O.R. and R. p. 151; 22 C.R.C. 98), and also that there is no tariff lawfully on file with the Board of Transport Commissioners for Canada authorizing such charges.

Following written submissions by the applicants and answer by the railways, this matter was set down for hearing and was heard in the City of Winnipeg, Man., September 6 and 7, 1944, in the presence of Counsel and representatives of the applicants and the railways.

To provide a background for what is here involved, it seems reasonable to summarize briefly the conditions under which the detention and icing of cars of export bacon at shipping points took place. Owing to difficulties created by



wartime conditions, in November, 1939, the railways introduced the permit system governing traffic for export from Canada. The object thereof was to control the movement of this export traffic so as to avoid congestion at ocean ports with consequent tying up of cars and other railway facilities and the slowing down of transportation services. Under this permit system, the agent of a railway cannot accept export traffic from shippers until he has been furnished by designated traffic officers of the railway with a permit authorizing its acceptance. These permits are issued only upon the designated officer of the railway being furnished with the steamship contract, or copy thereof, or other satisfactory evidence produced by the shipper that space is booked for a specified ship. Permits must not be issued for a quantity of traffic in excess of steamship contract and permits must show dates shipments may be accepted from shippers at originating stations. Insofar as concerns export bacon to the United Kingdom, its purchase and sale is controlled by the Meat Board at Ottawa. The procedure followed is as follows:—

The Meat Board is advised from time to time by the shippers, that is the packers, of their prospective production. The Transport Controller is notified by the British Ministry of War Transport of the expected arrival dates of steamers together with the capacity of each steamer. When the loading dates of the vessels are as definite as war conditions will allow, the Transport Controller advises the Meat Board of such dates, and the Meat Board, on the information given it by the packers, then gives the Transport Controller a breakdown of the total steamer refrigerator space which the Meat Board will require for its bacon, with the quantities from each shipper. This information in turn is given by the Transport Controller to the interested Steamship line. When the total steamer space has all been allocated, the Transport Controller advises the shipper that he will be expected to ship a designated quantity for a specified steamer. The Transport Controller also notifies the shipper of the loading date of the steamer. The Steamship line confirms the loading date direct to the shipper with particulars of the steamer space reservation, and also issues its own contract direct to the shipper.

In regard to permits for the rail movement from the packing houses to the ports, these are issued by the railways to the shippers. Officers of the railways holding authority to issue these permits are designated at strategic points throughout the country.

Each week the Foreign Freight Offices of the railways at Montreal receive information from the Transport Controller of the bacon bookings and this information is passed on to the various railway representatives interested. It sometimes occurs that the Steamship line contracts do not reach the Western Packers until some days after the railway representatives have received advice from Montreal of the quantities allocated to the various packers. In such event, to prevent delay, it is customary for the Western railway officers to wire to Montreal for the contract numbers, temperatures, loading dates and other information. On receipt of such requests, the information is forwarded immediately by wire so that the railway officers may issue the permits.

Commencing, however, some time early in 1940, an arrangement for loading cars with export bacon before steamship space had been allotted and permits issued was entered into. In the Spring of 1940 the applicants, the packers, were having difficulty in providing sufficient cold storage space in their plants. The Bacon Board (now the Meat Board) at the request of the packers, through the Transport Controller, made representations to the railways in view of which the railways agreed that a limited number of cars could be held on the tracks serving the packing plants for a temporary period. At this time it was arranged that the packers themselves would do all icing and re-icing of the refrigerator cars. However, the practice of loading cars with bacon and holding them on the packing plant tracks before there was steamer space available

increased and the packers found themselves unable to re-ice the cars on hand. The railways, therefore, were placed finally in the position of providing an undefined amount of cold storage space in their cars for the packers for indefinite periods at all the shipping points in Western Canada. Demurrage charges were assessed and collected on such cars for detention beyond the free time allowed by the Canadian Car Demurrage Rules. With regard to this arrangement, the applicants in their written submissions state:—

“The holding of loaded cars of Export Bacon on railway tracks at shipping points is an entirely abnormal action made necessary by war conditions. Such holding never did and never will occur in times of peace.”

The situation is, therefore, that since some time in 1940 (we were not furnished with actual dates) cars of export bacon have been loaded on packers' sidings at various points in Western Canada before steamer space was available and permits could be issued. These cars were taken by the railways from the packers' sidings and placed on railway hold tracks, and switched from the hold tracks to the railway ice-house for re-icing as required and instructed by the packers until permits were issued enabling shippers to furnish bills of lading and the cars could be moved from shipping point to the designated ocean port. The number of times cars were switched between railway hold tracks and ice-house, while so delayed, varied, of course, dependent upon the period of detention prior to cars being accepted for rail movement to the ocean port. The railways charged the packers for ice and salt supplied in re-icing cars in accordance with their published tariff provisions governing the furnishing of ice and salt for icing or re-icing of perishable traffic.

Applicants state, and it is not disputed, that,—

“The first intimation that the Railways intended to attempt to collect a switching charge in addition to the tariff charges for ice and salt on cars of Export Bacon held on railway tracks and iced, after such cars came under demurrage, was received by the Packers in April, 1942.

While there may have been some variations in the method of notification at different shipping points, the experience of Canada Packers Limited, at Edmonton, may be taken as typical.

On April 14, 1942, the following letter was addressed to them by the Secretary of the Local Freight Agents' Association at Edmonton:—

‘Local Freight Agents’ Association

EDMONTON, ALBERTA,

Messrs. CANADA PACKERS LIMITED,
Edmonton, Alberta.

April 14, 1942.

Dear Sirs:—Please be referred to Item under heading of Switching to and from Ice-Houses in Canadian Freight Association Special Tariff No. 40-B which reads as follows:—

‘Where perishable traffic is held on tracks of carriers at terminal points in excess of time allowed for holding cars under Car Demurrage Rules, necessitating switching service for the purpose of re-icing, such switching service will be performed at the expense of the owners of the property, charge in one direction only to be assessed, on the basis of re-consigned switching rates, and charged against the property.’

I have been instructed to advise you effective as from January 15, 1942, switching charge will be assessed in line with above regulation on all cars of Meat switched from hold track to Ice-House for re-icing. This Tariff applies to traffic for export via Canadian Ports as well as Canadian domestic traffic.

Yours truly,

(Signed) J. H. STOCKDILL,

Secretary.’ ”

By letter dated November 5, 1942, the Chairman, Canadian Freight Association, Winnipeg, notified the several applicants that the switching charge referred to would be charged from January 1, 1941, instead of from January 15, 1942, as previously advised, and demanded payment thereof to the railways.

The applicants submitted for the consideration of the Board three contentions, namely:—

- (1) That the assessment of switching charges for moving these cars to and from the Railway ice-houses at shipping points would be unfair, unreasonable and unjust.
- (2) That the assessment of such charges would constitute unfair, unreasonable and unjust discrimination against Canadian ports and in favour of United States ports.
- (3) That the assessment of such charges is entirely without legal authority.

These contentions they developed at considerable length, and, among other things, submitted that said C.F.A. Tariff 40-B, C.T.C. No. 1315, had no application, as it did not apply to export traffic.

The railways in their written answer to applicants' submissions contended that if it is held by the Board that the item in C.F.A. Tariff 40-B, C.T.C. No. 1315, does not apply, then, on the cars in question, there should be assessed the regular re-switching charges provided for in their tariffs covering switching, namely: C.P.Ry. Tariff No. W 570 (C.T.C. No. W 3294) effective 5th March, 1936, Item No. 5 (At All Stations); and C.N.Rys. Tariff No. 220-E (C.T.C. No. W 851) effective 20th December, 1933, Item No. 5 (At All Stations). The railways assert that the only question calling for a decision of the Board is which of the tariff items, referred to, is applicable to the services rendered.

As I view the matter, the only question which we require to consider and determine is what lawful tariff, if any, entitles the railways to make the switching charges here involved, and which they seek to impose. It will, therefore, not be necessary to deal with the other points submitted by the applicants for our consideration.

During the period of time which is here involved there have been re-issues of the tariffs to which reference was made as follows:—

Tariffs publishing Charges, Rules and Regulations governing the handling of perishable freight between Eastern and Western Canada:

C.F.A. 40-A, C.T.C. 1148, superseded by C.F.A. 40-B, C.T.C. 1315, effective November 5, 1941.

Tariffs publishing charges for Ice and Salt supplied by railways:

C.N.Ry. W.20-N, C.T.C. W.1544, effective January 1, 1940,

superseded by—

C.N.Ry. W.20-O, “ W.1839, “ July 28, 1942.

superseded by—

C.N.Ry. W.20-P, “ W.1860, “ January 5, 1943.

superseded by—

C.N.Ry. W.20-Q, “ W.1909, “ July 1, 1944.

C.P.Ry. W.150-E, “ W.3727, “ April 13, 1940.

superseded by—

C.P.Ry. W.150-F “ W.3851, “ August 26, 1942.

Tariffs publishing Switching Rates:

C.N.Ry. W.220-E, C.T.C. W.851 effective December 20, 1933.

superseded by—

C.N.Ry. W.220-F, “ W.1905, “ March 27, 1944.

C.P.Ry. W.570, “ W.3294, “ March 5, 1936.

superseded by—

C.P.Ry. W.570-A, “ W.3896, “ March 27, 1944.

Tariffs publishing Export Rates on Bacon:

C.F.A. 104-H, C.T.C. 388, effective April 1, 1938,

superseded by—

C.F.A. 104-I, “ 508, “ May 24, 1943.

However, the tariff provisions which will be quoted and commented upon read the same in the various tariffs of each description. Consequently, it is only necessary to refer specifically to one of each series of tariffs and the tariffs in effect at the time of hearing will be named.

The switching charges here in issue have been assessed by the railways under the provisions of C.F.A. Tariff 40-B, C.T.C. No. 1315. This is a special tariff publishing charges, rules and regulations governing the handling of perishable freight between stations East of Port Arthur, Fort William, West Fort William and Armstrong, Ont., and stations Port Arthur, Fort William, West Fort William, Armstrong, Ont., and West thereof. There are eight sections of the tariff. Section 1 covers charges for ice and salt furnished by the railways for the protection of perishable freight in refrigerator cars. The other sections cover charges and rules governing other services as therein specifically described.

The provision in Section 1, under which the switching charges were assessed, reads:—

“Where perishable traffic is held on tracks of carriers at terminal points in excess of time allowed for holding cars under car demurrage rules, necessitating switching service for the purpose of re-icing, such switching service will be performed at the expense of owners of the property, charges in one direction only to be assessed, on the basis of reconsigned switching rates, and charged against the property.”

Apart from its application by the railways in the case here under consideration, we were not told what conditions this provision was originally designed to meet or given examples of charges assessed thereunder. This provision was incorporated in C.F.A. 40 series tariffs effective October 15, 1937. The same provision has been contained in the tariff regulations covering the furnishing of ice and salt in Eastern Canada by the railways for at least twenty years. Obviously, therefore, its original incorporation in the tariff was not designed to specifically meet the situation we are here dealing with which, we are told, never existed until some time in 1940.

The first point for determination is whether this Tariff 40-B applies with respect to this export bacon traffic.

Special Tariff 40-B is restricted and governed by the provision on its title page reading “Unless otherwise specified herein, the charges provided for in this tariff will only apply on traffic having both origin and destination in the Dominion of Canada.” It will be observed that the application of the tariff is limited to traffic having “both origin and destination” in Canada “unless otherwise specified herein”. The latter words require, in my opinion, that the application of the tariff to traffic having its origin or destination outside of Canada must be specified in the tariff. Such a provision is found in Section 4 of the tariff, covering charges for use of heated refrigerator cars on carload shipments, where it specifically states that the charges therein published will, unless otherwise provided in the tariff of initial carrier, also apply from Canadian border points, Fort Erie, Ont., and East thereof, on traffic originating in the United States; also on import traffic from United States Atlantic Seaboard ports; as well as on import traffic from British Columbia Coast ports.

In Section 1 (first paragraph) of said Tariff 40-B it is stipulated that the charges for ice and salt furnished by the railways will be as follows:—

“When ice and/or salt is required for the protection of perishable freight in carloads, the railways parties to this tariff, when requested to

do so, providing the icing is done at their regular or secondary icing stations, shall furnish same, and the charges for ice and salt at such regular or secondary icing stations will be as follows:—

ICE:

At stations in British Columbia, \$5.00 per net ton, excess *pro rata*, minimum charge \$2.50.

At other stations except as specified hereunder, \$4.00 per net ton, excess *pro rata*, minimum charge \$2.00.

At Saint John, N.B., on all traffic other than export or import, \$5.00 per net ton, excess *pro rata*, minimum charge \$2.50.

At Toronto, Ont., team tracks, \$4.50 per net ton, excess *pro rata*, minimum charge \$2.25.

At Grimsby, Ont., \$4.00 per net ton, excess *pro rata*, minimum charge \$4.00.

SALT:

At stations Port Arthur, Fort William, West Fort William, Armstrong, Ont., and west thereof, \$1.00 per 100 pounds, minimum charge \$1.00.

At stations east of Port Arthur, Fort William, West Fort William, Armstrong, Ont., 75 cents per 100 pounds, minimum charge 75 cents.

Exception:—The foregoing charges will not apply on fruits and vegetables, in carloads, from stations in British Columbia to stations in Eastern Canada. For rules and charges refer to Canadian Freight Association, Western Lines, Tariff No. 119-E, C.T.C. No. 456, supplements thereto or re-issues thereof.

Charges for Ice and Salt supplies at points in the United States will be found in Section 4, National Perishable Protective Tariff No. 11, I.C.C. No. 17, J. J. Quinn, Agent."

Counsel for the railways referred to the words "on all traffic other than export or import", used in connection with Saint John, as indicating that Section 1 includes export traffic. To accept this view would require interpreting the words in the two preceding paragraphs "At stations in British Columbia" and "At other stations" as applying to export or import traffic. This, it seems to me, would necessitate a very strained and unnatural interpretation. The provision above quoted seems clearly to merely name the "stations" at which ice is furnished and not the class of traffic involved. The traffic on which the tariff applies is controlled by the provision shown on the title page and is traffic having both origin and destination in Canada, unless otherwise specified in the tariff. While the reason for inserting the words in question, in relation to Saint John, is not entirely apparent, I am unable to agree that they have the effect of making Section 1 applicable to export traffic. Further, provision for furnishing ice on export traffic from Western Canadian points at stations in Eastern Canada (and, of course, Saint John) is contained in C.N.Rys. Tariff CR-200, C.T.C. E.1694, Item 145, and C.P.Ry. Tariff E-3050, C.T.C. E-4126, Item 140.

So far as concerns traffic moving over the Canadian Pacific Railway, the provision reading "At Saint John" has no application, so that giving effect to the railways' submission, we would require to interpret the words "At stations in British Columbia" and "At other stations" (and without in the case of that railway taking any cognizance of the provision at Saint John) as describing the traffic, and as including export and import traffic, without any words to so indicate, ignoring the provision on the title page of the tariff and what has already been above stated. This requires explanation. The first paragraph of

Section 1 of Tariff 40-B above quoted, stipulates that the charges named below it are for ice and salt furnished by the railways "providing the icing is done at their regular or secondary icing stations." There is also another provision later on in this section that "When icing service is necessary or required at other than regular or secondary stations, the Railways will endeavour to obtain ice for the purpose and collect therefor the actual cost of ice and labour." The tariff contains a definition of regular and secondary icing stations, but does not name them, necessitating reference to some other tariff to ascertain this information. C.P.Ry. Tariff C.T.C. E.4126 covers charges for ice and salt furnished by the railway at stations in Eastern Canada. It names the regular and secondary icing stations and Saint John, N.B., is not listed as a regular or secondary icing station; consequently, the named icing charge at Saint John has no application so far as the Canadian Pacific Railway is concerned.

It is also noted that Grimsby, Ont., a point on the Canadian National Railways, is named. This point has for some considerable time been eliminated as an icing station for the stated reason that such service is no longer provided at that point, but it is still shown in Section 1 of this tariff.

I mention these features for the reason that it suggests, possibly, a lack of sufficient carefulness and clarity in the wording of the tariff in the instances cited and one or two other provisions therein which it is unnecessary to refer to.

Prior to publication of the first C.F.A. 40 series, effective October 15, 1937, the provision for furnishing ice and salt by the railways at points in Western Canada for the protection of perishable freight to Eastern Canadian points for export was contained in C.P.Ry. W.150 series and C.N.Rys. W.20 series of tariffs. The provision for furnishing ice and salt at points in Eastern Canada on export traffic from Western Canadian points was contained in the Eastern Canadian tariffs to which reference has already been made to those currently in effect. Then, and now, these tariffs also contain certain provisions relating to the collection of icing charges on export traffic (Rule 10, Page 30, current C.P. W.150 series; Rule 7, Page 36, current C.N. W.20 series and corresponding provisions in the Eastern tariffs). These tariffs have not been in any way modified with respect to their application to export traffic since publication of C.F.A. 40 series, nor do the latter contain any provision indicating that they modified or cancelled the provisions of the other tariffs with respect to export traffic. The individual Western and Eastern Canadian tariffs of these railways still apply on export traffic. If, notwithstanding the limitation of the application of Tariff 40-B as shown on its title page, the intention was that Section 1 should apply on export traffic, one would expect to find therein the same provision as above referred to relating to the collection of icing charges on export traffic as well as unequivocal words to conclusively show such application.

Dealing further with the provision on the title page of Tariff 40-B as to its application only "on traffic having both origin and destination in the Dominion of Canada", Counsel for the railways contend that this export bacon traffic falls within this provision for the reason that the origin and destination upon the railway of the cars in question are within Canada. Counsel for the Canadian Pacific Railway stated (Evidence, Page 1275):—

"The ultimate destination so far as the railways are concerned is the Canadian port of shipment. That is where the carriage ends so far as the railways are concerned. That is where the railway car is unloaded and delivery is effected by the railway."

Applicants, on the other hand, take the position that although the traffic moved via Canadian ports, its destination was not a point in Canada, but in the United Kingdom, as clearly evidenced by the bills of lading as well as the provisions of

C.F.A. Tariff 104-1, C.T.C. 508; that traffic "consigned through" to the United Kingdom cannot be "traffic having.....destination in the Dominion of Canada".

Webster's New International Dictionary defines "destination" as "the place set for the end of a journey, or to which something is sent; place or point aimed at".

The first document issued covering this traffic is the regular prescribed railway bill of lading form. It is stated these bills of lading are immediately surrendered by the shippers to the railway in exchange for through export bills of lading. Some copies of these were filed as exhibits. One of the railway bills of lading, covering car C.P. 284928 shipped by Burns & Company Limited from Winnipeg, August 31, 1944, shows the traffic consigned to British Ministry of Food, Bacon and Ham Branch for Export; destination West Saint John. In the body of the form there is shown the following:—

"Ocean contract 183 rail permit H.A. 8176 25/30 space intended for shipment on ss. *Cairnvalona* loading at W. Saint John, N.B."

There was issued on this car as of the same date a through export bill of lading. It is headed:—

"CANADIAN PACIFIC RAILWAY COMPANY

In Connection With Other Carriers On The Route

TRANS-ATLANTIC

THROUGH EXPORT BILL OF LADING

It sets out that the traffic is to be carried to the port of West Saint John, N.B., and thence by Cairn Thomson Line to a port in the United Kingdom. On the back of this through export bill of lading, there is printed separately the conditions with respect to rail carriage in Canada (being those approved by this Board and shown in the railway bill of lading) and the conditions with respect to the ocean carriage. The through export bill of lading is signed by an officer of the railway "On behalf of carriers severally and not jointly". Counsel for the Canadian Pacific Railway stated (Evidence, Page 1279):—

"so far as the railways are concerned, the port of export is the destination because that is where the railway journey ends and that is, where the railway car is unloaded. We do not know what happens to it after that.

First of all, we issue a straight railway bill of lading which, on the face of it, bears the destination as West Saint John, Halifax, Montreal or wherever it is, for export—I assume the words 'for export' are there. It is never in the contemplation of either party that these goods are anything else than for export from the moment they are put in the cars. As I see it, this original bill of lading is subsequently surrendered for the through bill of lading which is really the two documents, for convenience, printed together. This covers the whole journey, the journey from the railway point of origin to the railway destination and the journey from the steamer point of origin to the steamer's destination.

Now, this through bill of lading in no way supplants the railway bill of lading. It is a repetition of the railway bill of lading plus a further bill of lading which covers what the steamship line is going to do with the goods. Let us look at this through bill of lading for a moment. At the bottom it says,

'In witness whereof. The agent signing for the Canadian Pacific Railway and its connecting railway and steamship lines severally and not jointly, . . .'

That is, confirming the bills of lading, the agent is acting in each case as an agent for the individual company in signing the bill of lading. This part of the railway bill of lading he signs as agent of the railway company to its destination, and as agent of the steamship company, from the port to its destination."

Counsel for applicants stated the through export bill of lading is the document on which the traffic is carried right through from its point of origin in Canada to its destination in the United Kingdom; that there is no break, no losing of its identity; that upon its issuance it is the only bill of lading the shippers have and is the bill which is used for financing when financing is done by the bank and is the bill which is attached to the draft where a draft goes forward with the bill of lading attached. So far as the shipper is concerned, it is a through contract of carriage of traffic, the destination of which is not a point in Canada.

In their written answer, the railways stated "the railways have treated such cars as shipments intended for export to the United Kingdom via a Canadian port of export".

As bearing on the destination of the traffic, reference was made to the tariff under which it is carried from point of origin to the seaboard. This is C.F.A. Tariff 104-1, C.T.C. 508. It is a special and competitive, local, joint and proportional export freight tariff naming export rates from stations in Western Canada to eastern seaboard ports in Canada and the United States. It contains the following provisions:—

"(a) Unless otherwise provided in individual items, rates named herein for export are applicable only on traffic consigned through to British and foreign countries, including Cuba, the Insular Possessions of the United States and the Panama Canal Zone, but are *not* applicable on traffic for points in Canada, the United States, Newfoundland, or the Islands of St. Pierre and Miquelon.

(c) These proportional export rates will be applied only upon satisfactory proof of export to destinations named in paragraph (a)."

Item 370 in this tariff names the rates on the traffic here involved and specifically stipulates "Packing House Products, as per list below—For export on shipments destined only to the United Kingdom and/or Europe." Clearly, the "destination" or "place set for the end of the journey" of this traffic is not in the Dominion of Canada but a point in the United Kingdom.

As indicating that in the view of the Board "destination", when unqualified, has not the restricted meaning here placed upon it by the railways, the Board has stated in the matter of Rates on Grain from Prairie Points to Pacific Coast Ports for Export (Vol. 13, Board's Judgments and Orders, P. 173 at P. 178) "It must be recognized that on export movements the rail rate to the point of export is only one factor in getting the product to its destination."

If Halifax is the destination of this traffic carried under the provisions of C.F.A. Tariff C.T.C. 508, then New York, Boston and Philadelphia would be the destination of traffic carried to those points under the same tariff, which would require the filing of the tariff with the Interstate Commerce Commission. This tariff is not filed by the railways with the Interstate Commerce Commission for the reason, as I understand it, that they have never considered these United States ports as being the destination of the traffic and the Interstate Commerce Commission has no jurisdiction with respect to traffic moving from Canadian points through United States ports for destinations in the United Kingdom or other foreign countries.

Further, in respect to the destination of traffic, it may be mentioned that many cases have come before the Interstate Commerce Commission in which its

jurisdiction over certain shipments of goods was challenged. A number of these involved the question whether the interstate or the intrastate tariff was applicable. In a number of such cases it was held, both by the Interstate Commerce Commission and the Supreme Court of the United States that, whether the interstate or the intrastate tariff is applicable depends upon the essential character of the movement. That the actual movements and the real character of the shipments are the determining elements. I mention here only three of such cases: *Baltimore & Ohio S.W. Railroad Co. vs. W. H. Settle et al*, United States Supreme Court Reports, 67 Law Ed. U.S. 260, page 189; *Michael Comella et al vs. Delaware, Lackawanna & Western Railroad Co. et al*, 201, I.C.C. Reports 529; *E. J. Stanton & Son vs. Atchison, Topeka & Santa Fe Railway Co. et al*, decided March 27, 1944, 258 I.C.C. Reports 315.

In *Baltimore & Ohio S.W. Railroad Co. vs. Settle, supra*, at page 192, it is stated:—

“Under these circumstances, the intention, as it was carried out, determined, as matter of law, the essential nature of the movement; and hence, that the movement through to Madisonville was an interstate shipment. For neither through billing, uninterrupted movement, continuous possession by the carrier, nor unbroken bulk, is an essential of a through interstate shipment. These are common incidents of a through shipment; and when the intention with which a shipment was made is in issue, the presence or absence of one or all of these incidents may be important evidence bearing upon that question. But where it is admitted that the shipment made to the ultimate destination had at all times been intended, these incidents are without legal significance as bearing on the character of the traffic.”

It was intended from the beginning that the bacon products should go, as export traffic, to Great Britain. In other words, Great Britain was, at all times, the ultimate destination of the traffic. As counsel for one of the railways put it, it was never in the contemplation of either party that these goods were anything else than for export from the moment they were put in the cars.

As regards the meaning of “destination”, some stress was laid in argument on the judgment of the Privy Council in *Canadian National Railways v. Canadian Pacific Railway Company*, 44 C.R.C. 1. In that case the Canadian National Railway Company and the Canadian Pacific Railway Company had made an agreement which contained a provision under Article 7 thereof for a division of outbound freight traffic originating on the lines of the Northern Alberta Railways Company and “destined to competitive points on or beyond the lines of the parties.” The question was whether grain shipped from stations on the northern Alberta Railways to Prince Rupert or to Victoria for export was traffic destined for competitive points. The bills of lading of the grain in question required delivery at Prince Rupert or Victoria, as the case might be. When the grain reached either of these points it lost its identity because it was there stored in elevators with other grain. What the shipper then had was a right to an equivalent amount of grain of the same grade. In these circumstances, the Privy Council held that the port named in the bill of lading was the destination of the grain within the meaning of Article 7.

I do not think that the interpretation of “destination” in the agreement between the two railway companies has any necessary bearing on the meaning of the same word in Tariff 40-B. Words vary in meaning with their contexts and the circumstances in which they are used. For example, in the judgment referred to, the Privy Council held that Prince Rupert and Victoria were “competitive points”. Both of these ports were served, as far as export grain traffic was concerned, by the Canadian National Railways alone. Although it was authoritatively held that these ports were competitive points within the

meaning of the agreement, it is hardly arguable, I think, that they were competitive points as those words are used in Section 329 (4) of the Railway Act, or tariffs filed with the Board, or orders of the Board relating to tariffs.

I do not see how the provision on the title page of Tariff 40-B can reasonably be held to have the restricted meaning here placed upon it by the railways. It seems to me its wording clearly should be construed in accordance with its literal reading, namely, if the origin and destination of the traffic is in Canada, the tariff applies, and if the destination of the traffic is not in Canada the tariff is inapplicable.

Upon giving careful consideration to all of the matters above referred to on this point, I reach the decision that the destination of this traffic was not a point in Canada and that Tariff 40-B does not apply on the traffic in question.

As an alternative, the railways contended that if C.F.A. Tariff 40-B does not apply, on the ground that the shipments in question are not traffic having both origin and destination in the Dominion of Canada, such shipments would then be subject to the switching charges provided for in C.P.Ry. Tariff No. W 570 (C.T.C. No. W 3294), and C.N.Rys. Tariff No. 220-E (C.T.C. No. W 851).

Quite extended reference was made by both the applicants and the railways to the Board's judgment of May 23, 1917, in the matter of charges for ice and salt supplied by carriers for freight in refrigerator cars (Ontario Fruit Growers Association and Packing House Companies *vs.* Canadian Freight Association, 22 C.R.C. 98). Briefly summarized, the contentions of the applicants and the railways with respect thereto are:—

Applicants.—The Board fixed the price to be charged by the railway for ice and salt, which covered all the service performed by the railway in connection with the icing of cars, including the cost of switching cars to and from railway ice-house. Therefore, to attempt to assess, in addition to the charge fixed for ice and salt, switching charges on the cars taken from packers' sidings and held on railway hold tracks awaiting permits to enable them to be moved over the railway and for the various re-icings necessary while cars are so held, is a violation of the Board's judgment, consequently illegal, and an effort to collect twice for switching service.

Railways.—The Board's judgment has no bearing on the question now before the Board. The service rendered by the railway in switching cars to the ice-house for re-icing and back to the yards to be further held until billing instructions are received is a straight switching service performed without any relation to any service involving the movement of the shipment to destination. Such switching service is not incidental to but is in addition to the services involved in moving the traffic from origin to destination. The switching service necessitated for the purpose of such re-icing does not form a part of or arise out of the movement from shipping point to destination and the rate paid by the commodity to cover the incidence of transportation does not contemplate this additional service. The Board in its 1917 judgment dealt only with initial icing and icing in transit. The service given by the railway here was not then before the Board, in fact a service never given until some time in 1940. There is nothing in the Board's judgment to indicate that any charge assessed for ice supplied is to include cost of re-switching of cars under load any number of times while being held at shipper's convenience on railway tracks awaiting billing.

In 1916 the railways filed tariffs with the Board providing for an increase in the charge for ice supplied as well as a haulage charge for the ice. The tariffs

were suspended by the Board, hearings took place, and the matter disposed of by the 1917 judgment. What was there involved was the initial icing of the cars, where this service was performed by the railway, as well as the icing of cars in transit. The railways filed statements showing the cost of performing this icing service and included in the items making up the charge was the cost of the switching of cars in giving this icing service. In the tariffs of the railways prior to those filed in 1916, in the tariffs then filed, and in all tariffs since filed, the provisions therein publishing charges and regulations governing the furnishing of ice have made no reference whatever to switching or a switching charge. The tariffs are all silent on this point. However, the situation is that the cost of the necessary switching was included in the cost of furnishing ice as placed before the Board in 1916, and for the past forty years the tariff provisions covering charge for ice supplied in initial icing and icing in transit have been construed by everyone as including the switching involved in performing the icing service. It is clear that there was not there involved any question as to whether a switching charge, in addition to the charge for ice, would be justified with respect to icing service given by the railways under the conditions which are here before the Board and such conditions did not then exist. In that case there was also the question of charge for salt furnished by the railways for which a separate charge had been published in their tariffs a short time previously. The Board's General Order No. 192 of May 30, 1917, issued pursuant to the judgment of May 23, 1917, refused the application to disallow the charge made by the railways for salt supplied to refrigerator cars with ice and it disallowed the tariffs filed in 1916 providing for an increase in the charge for ice supplied and the haulage charge for the ice. This order issued in 1917 and disallowed certain tariffs which were under suspension. This order made twenty-seven years ago can only be properly construed as disallowing the tariffs therein named. It was not a bar to the future publication of some modified tariff provision with respect to the charge for ice supplied subject, of course, to complaint and investigation by the Board as to the reasonableness thereof as provided by the Railway Act. In this connection it may be pointed out since that order issued the charge provided for in the tariffs for ice supplied has been twice increased, owing to increased cost to the railways, and it has not been alleged by anyone that such action was in violation of the Board's order.

The tariffs applicable with respect to ice and salt furnished by the railways at shipping points for the traffic under consideration are C.P.Ry. 150 series and C.N.Rys. 20 series. Item 170 in C.P.Ry. Tariff W.150-F, C.T.C. W.3851, contains the provisions covering charges and regulations governing ice and salt supplied by the railway. The heading of the item reads:—

"Perishable Traffic Under Refrigeration

The following rules and charges will apply in handling under refrigeration, shipments of perishable traffic loaded in refrigerator cars at stations on the following railways:—

CANADIAN PACIFIC RAILWAY COMPANY

(Lines Port Arthur, Ont., and West thereof)

The Esquimalt and Nanaimo Railway Company."

By an exception the item does not apply on fresh fruit and vegetables from stations in British Columbia, and these commodities and other perishable freight from and to United States points, and reference is made to other tariffs which govern this traffic. Rule 4 (a) in this item states:—

"4. (a) Carload perishable freight handled under the provisions of this Item will be initially iced, iced or re-iced, at any of the regular icing stations shown below."

Rule 5 reads:

"5. Charges for initial icing or re-icing of perishable traffic at regular or secondary icing stations will be on the following basis, in addition to all other charges, subject to minimum:

	<i>Ice</i> In dollars and cents per ton of 2,000 lbs.	<i>Salt</i> In dollars and cents per 100 lbs.
At points where ice and/or salt is furnished in		
British Columbia	\$5.00	\$1.00
Alberta		
Saskatchewan	4.00	1.00
Manitoba		
Ontario (Port Arthur, Ont., and West thereof)		

NOTE.—Minimum charges for ice and/or salt furnished at above points will be as follows: Minimum charge per car for each icing or re-icing will be 1,000 lbs. ice and 100 lbs. salt at rates applicable at station where furnished."

Item 220 in Canadian National Railways Tariff W.20-Q, C.T.C. W.1909, contains the corresponding provisions of that company. It carries the same exception as above noted. The item is headed: "Ice and Salt Supplied Carload Freight". Rules 1 and 2 read:—

"1. *Ice*—All carload freight shipped in refrigerator cars requiring the use of ice as a preservative, if iced by this Railway for shippers will be charged 20 cents per 100 lbs., minimum \$2.00 per car for each icing, for the quantity of ice supplied in Ontario, Manitoba, Saskatchewan and Alberta, and 25 cents per 100 lbs., minimum \$2.50 per car for each icing, for the quantity of ice supplied in British Columbia. Ice supplied to cars in transit will be charged for at the same price for the quantity of ice used.

2. *Salt*—Salt furnished with ice used for the protection of freight in refrigerator cars, in addition to the charge for ice, will be charged for at the rate of \$1.00 per 100 lbs., with minimum charge of \$1.00."

Rule 9 names the regular icing stations.

It is my understanding that all the points, where the re-icing of the traffic here under consideration is performed by the railways, are regular icing stations. It will be noted that the item in Canadian Pacific tariff provides (Rule 4) that the traffic will be initially iced, iced or re-iced at any of the regular icing stations and in Rule 5 there is set out the charges for initial icing or re-icing at regular icing stations. Clearly, the underlined words provide for the re-icing performed by the railway on the traffic here in question.

Rule 1 in the item in Canadian National tariff sets out the charge to be assessed on traffic in refrigerator cars "if iced by this Railway." Such wording covers all initial icing or re-icing done by the railway.

So far as concerns the traffic here involved, it is understood the initial icing of the car is done by the shipper. The railways state that when they have received billing instructions (i.e., the bill of lading) and are instructed by shipper to re-ice a car before placing it in transit, they do so and assess no charge for any switching performed for the purpose of such re-icing. If a car is initially iced by the railway it makes no charge for the switching service given with respect thereto. Switching is also performed in connection with re-icing of cars in transit and no charge assessed for switching. In all these cases the charges set out in the tariffs for ice and salt supplied are assessed and nothing more.

In addition to the icing service just described, under the conditions existing since some time in 1940, as outlined earlier herein, cars have been loaded on packers' sidings and taken therefrom by the railway and placed on its hold tracks and subsequently switched between hold tracks and railway ice-house for re-icing. Loaded cars have also been moved from packers' sidings to the railway ice-house for re-icing and then taken to hold tracks and sometimes subsequently re-iced. This detention to cars and re-icing takes place between the loading of the cars and the issuance of permits enabling the cars to be placed in transit. It is the contention of the railways that for the re-icing in these cases, in addition to the charge published in their tariffs for ice and salt, there is proper and legal tariff provision for assessing charges for switching as well.

I have quoted the relevant tariff provisions and pointed out that, as worded, they cover icing and re-icing of cars under all of the conditions above described and for all of these services the charges of the railways for ice and salt supplied have been those published in these tariff provisions. As already stated herein, these tariff provisions are silent with respect to switching but have always been construed by everyone as including the switching involved in performing initial icing and re-icing in transit.

There are numerous provisions in the tariffs of the railways which, like those here discussed, make no reference whatever to switching, but which have always been construed by the railways as including in the charge for the various services described any switching performed in connection therewith. Examples are the charges published for change of destination of cars in transit; for cleaning and disinfecting live-stock cars; various stop-off arrangements.

We have here a tariff provision which for a great many years has been construed by everyone as including in the charges therein published all switching performed in providing the services which have been given under it. Now, since 1940, an icing service of a slightly different character enters the picture which was not previously given and which it is claimed was not intended to be given upon the same terms. However, no separate or amended tariff provision was made to cover it and the tariff provisions, as presently worded, embrace all the icing services described. Obviously, the tariff provision required modification to indicate clearly, by appropriate wording, the services to be given and the charges to be made for them, as a prerequisite to legalizing the assessment of a switching charge and a construction of the tariff which is at variance with that which has heretofore been placed upon it.

What we are, in effect, asked to do on the submission of the railways is to say that a tariff provision, which has heretofore included the necessary switching, should now be read as including the necessary switching for some of the services given under it, but provides, in addition, for a switching charge for some of the services given under it. We are asked to make such an interpretation of the tariff without any words therein to make such a distinction and to give it that effect, and without the tariff provision containing any notice to the public designating the services which include switching and those which are exclusive of switching.

Upon the present reading of the tariff provisions and in view of what has been above set out, if the Board were to interpret the tariffs in the manner here contended for by the railways, I consider it would be repugnant to any reasonable canon of tariff construction.

There are certain fairly well defined rules which the Board has, on other occasions, applied to the construction of tariffs of tolls. These rules, and their application by the Board, can, perhaps, be best illustrated by reference to a couple of decisions.

In *Robin Hood Mills Limited vs. Canadian Pacific Railway Company*, 28 C.R.C. 50, at 54 the Board stated:—

“I am unable to conclude that the argument as regards discrimination, as set out on behalf of the railway—even if the contentions are valid—should enter into the determination of the legal construction of the tariff.

It seems to me that from the standpoint of legal construction the meaning is clear. But even if there were an ambiguity, the authorities in this respect must be borne in mind. In the decision of the former Chief Commissioner, Sir Henry Drayton (24 C.R.C. 128), already referred to, which led up to the issuance of General Order No. 234, the following language was used:—

‘Tariffs when ambiguous, if they can reasonably and properly be read in ease of the shipper, following the usual practice are so construed.’

Toll clauses are to be construed with strictness, and it is the public rather than the parties who have obtained the Special Act containing such clauses in whose favour any ambiguity of meaning should be determined.

Aberdeen Commercial Co. v. Gt. North of Scotland Ry. Co., 3 Ry. & Can. Traf. Cas. 213.

Rulings regarding the wording of the classification may be taken as having a bearing on rulings regarding construction of the provisions of the tariffs. The classification of an article of commerce should be stated in terms that the shipping public may readily understand. The tariffs are to be construed according to their language, and the intention of the framers and the practice of the carriers do not control.

Newton Gum Co. v. C.B. & Q. Rd. Co., 16 I.C.C. 341; *Pacific Biscuit Co. v. S.P. & S. Ry. Co.*, 20 I.C.C. 546.

It is established by authority that tariffs are to be strictly construed against the railway (See *Municipality of Nelson v. B.C. Tel. Co.*, 27 C.R.C. 270 at 275; *Aberdeen Commercial v. Gt. North of Scotland Ry. Co.*, *supra.*). Further, the intention of a tariff, or a classification is to be plainly shown in the wording of the tariff or classification, and is not to be arrived at by representations as to what the intentions of the carriers were in framing the provision concerned.”

In *Kotex Company of Canada Limited vs. Canadian Freight Association*, 41 C.R.C. 158, at foot of 161, the Board said:—

“Fourth, the following citation from the Board’s Judgment in *Dome Mines Ltd. v. C.N.R.* (1933), 41 C.R.C. at pp. 44-5 is relevant here:—

‘This Board, as well as the Interstate Commerce Commission has held that any doubt as to the meaning of a tariff should be construed against the party responsible for having such tariff in effect; that the intention of the framers of the tariff is not controlling and they are to be construed according to the language used, but we also take the same view as the Interstate Commerce Commission, namely, that:—

‘Although doubt as to the meaning of a tariff must be resolved in favour of the shipper and against the carrier which compiled it, the doubt must be a reasonable one and the terms of a tariff must be taken in the sense in which they are generally understood and accepted commercially. All of the pertinent provisions of a tariff must be considered together, and

if those provisions may be said to express the intention of the framers under a fair and reasonable construction, that intention must be given effect." 118 I.C.C. 186; 161 I.C.C., 77.'

Neither carriers nor shippers can be permitted to urge for their own purposes, a strained and unnatural construction. Concerning the terms of this tariff, as they have been generally understood and accepted commercially, it seems very clear from this record that for approximately five years the applicant has accepted the tariff as not governing on shipments of Kleenex. The wording of the item in question has not been changed during all this period, but it is only now that it is urged that it governs. So far as we are advised, no other shipper of the same products has contended that such item governs."

It is not without significance that the railway officials, themselves presumably conversant with the provisions of the various tariffs of tolls, did not attempt to assess or impose any switching charges against the shipper applicants for the switching services performed by the railways in re-icing the loaded cars until April, 1942, although the practice of re-icing cars held on hold tracks of the railways had been in effect from some time in 1940.

Because of the conclusions I have reached after full and careful consideration of the whole record and argument, it would not seem necessary to further consider the switching tariffs to which reference was made, other than to say that I do not think that they can have application under the circumstances present here. Nor do I think it necessary to enter upon a discussion of other matters referred to in the various submissions.

For the reasons stated, I find that there is not now, nor has there been at any time, material to the issues in question here, any provision in the tariffs of tolls of the railways, or either of them, legalizing the assessment of the switching charges which they have billed against the shipper applicants on this export traffic, or which they claim to be entitled to charge the applicants for such switching services.

J. A. CROSS.

Ottawa, December 20, 1944.

I concur,

J. A. STONEMAN,
F. M. MACPHERSON.

Review and reconsideration of the application of the Municipality of Chester, in the Province of Nova Scotia, and the application on behalf of residents of Chester, under Section 256 of the Railway Act, for an Order authorizing the opening and maintenance of a highway crossing over the Canadian National Railways at Goat Lake, Lunenburg County, which was closed under the Order of the Board No. 54422, dated June 10, 1937.

File No. 36352.27

JUDGMENT

CROSS, CHIEF COMMISSIONER:

This is a review and reconsideration of the application of the Municipality of Chester, in the Province of Nova Scotia, and the application on behalf of residents of Chester, under Section 256 of the Railway Act, for an order authorizing the opening and maintenance of a highway crossing over the Canadian National Railways, at Goat Lake, Lunenburg County, which was closed under Order of the Board No. 54422, dated June 10, 1937.

This matter was heard at Chester, in the Province of Nova Scotia, on Thursday, October 26, 1944. Mr. R. Clifford Levy, Solicitor, and Clerk and Treasurer of the Municipality of Chester, appeared for that municipality; Mr. Philip H. Moore, President of the Chester Board of Trade, represented that body; and Mr. H. C. Friel, K.C., and Mr. A. K. Dysart appeared for Canadian National Railways, hereinafter called the Railways. The Department of Highways for Nova Scotia was not represented at the hearing although duly served with notice thereof.

For an understanding of what is involved it would seem desirable to state some of the history of the crossing which previously existed, at the location in question, and was commonly known as the Goat Lake crossing.

Upon the application of the Department of Highways of the Province of Nova Scotia, under Section 257 of the Railway Act, the Board by its Order No. 54422, dated June 10, 1937, ordered that the applicant be authorized to divert Trunk Highway No. 3 so as to eliminate the existing grade level crossing of the Railways at Goat Lake, Lunenburg County, as shown on the plan and profile on file with the Board under File No. 36352.27; that the Railways pay the sum of \$1,000.00 toward the cost of said work; that with the approval of the Governor in Council by Order in Council P.C. 1279, dated June 5, 1937, seventy per cent of the cost of said work after deducting the said contribution by the Railways, not exceeding, however, the sum of \$18,910.00, be paid out of the fund appropriated by Parliament for the purpose under Department of Transport Vote No. 357, Special Supplementary Estimates 1937-38, and that the remainder of such cost be paid by the applicant, the Department of Highways of the Province of Nova Scotia.

The said Vote No. 357 read as follows: "Amount to be applied by the Board of Railway Commissioners for Canada towards the cost of actual construction work for the protection, safety and convenience of the public in respect to highway crossings of railways, as the Governor in Council may from time to time determine...."

The amount actually paid out of said vote, through the Board, toward the construction of the said works was \$17,324.78. The Railways contributed \$1,000.00, and the balance was paid by the Province.

On the 5th of May, 1937, and before making said Order No. 54422, an inspection of the location and the proposed diversion and works was made by a Division Engineer of the Board, on the ground, who made his report in writing to the Board.

The diversion and works authorized by Board's said Order No. 54422, dated June 10, 1937, were carried out and the Goat Lake level crossing was closed.

At the time of the execution of the said diversion and works, and the closing of Goat Lake crossing, the highway was senior to the Railways at the location of such crossing.

Subsequent to the closing of the Goat Lake crossing, and commencing in April, 1941, complaints came to the Board by and on behalf of local residents in the neighbourhood of the crossing protesting against the closing of the crossing and asking to have a highway crossing opened over the Railways at the same location. The first of such applications was made by the Board of Trade of Chester. This application was dismissed by Board's Order No. 60673, dated May 7, 1941. The second application was made by the Municipality of Chester. It was dismissed by Board's Order No. 62117, dated April 11, 1942. A third application to open a highway crossing over the Railways, at the location of the former Goat Lake crossing, was made on behalf of the residents of Chester who were most directly concerned. This application was also dismissed by Board's Order No. 64712, dated April 15, 1944.

On April 5 and 6, 1944, and prior to making the said last mentioned Order No. 64712, the Board caused an inspection to be made of the location on the ground by a District Engineer, who presented his report in writing to the Board. This report we have on our files. During his inspection, the District Engineer was accompanied by representatives of the Railways, the Municipality of Chester and the Goat Lake community.

Further requests came to the Board to have a highway crossing opened up over the tracks of the Railways at the location of the previous crossing. The Board decided to review and hear the matter further at a sittings of the Board, in Chester; and, as previously stated, such hearing took place on October 26, 1944.

The Department of Highways of the Province of Nova Scotia has now, and has had at all times material to what is here involved, jurisdiction over the highway or road at the location of the proposed crossing.

Some twenty-five families who reside in the Goat Lake area of the Municipality of Chester are chiefly concerned with the re-establishment of a crossing. They own or occupy bush lots, and farm only in a small way. These people are concerned mostly with cutting and taking out wood and lumber, and do a certain amount of fishing. They use, in their work, oxen and horses. The re-establishment of the crossing would remove, to a large extent, the inconvenience which a number of people now suffer in getting from their homes to their woodlands. Some of these people in the vicinity of Goat Lake own land on both sides of the Railways' right of way. Their present nearest crossing over the railway is at the Henneberry grade crossing. This results in the people having to travel along the new highway diversion to the Henneberry crossing and back over the old road to a "bush road" near the former Goat Lake crossing, a distance of almost two miles, in order to get to some of their bush lots. This extra distance is considerable, particularly when oxen are used. The new road diversion is usually cleared of snow in the wintertime. The result is that the wood and timber which is brought from the woods by sleigh, on occasions, has to be transferred from the sleighs to wagons for the portion of the journey over the new highway.

There can be no doubt that the opening of the proposed crossing would be a great convenience to a considerable number of people who live in the Goat Lake area.

There is, however, not much change in the situation as to necessity for a crossing at the point than existed at the time that the Goat Lake crossing was closed. Except that, because of conditions arising out of the war, there is a greater demand for wood and timber, and at more favourable prices. The

present applicants answer this situation by saying that the crossing was always necessary and should not have been closed.

The Railways are prepared to consent to the opening of the crossing, provided they are refunded the \$1,000.00 paid toward the cost of the road diversion and works, on the express condition that the Goat Lake crossing be closed, and on the further condition that no part of the cost of construction and maintenance of the crossing be placed upon the Railways. They further state that they do not think that it would inconvenience the Railways to have the crossing reopened.

The attitude of the Department of Highways and Public Works of the Province of Nova Scotia, as gathered from certain correspondence passed between the Department and the Board prior to the hearing, would appear to be as follows: They have no objection to the reopening of the crossing, and are agreeable to bearing the cost only of the actual work of reopening the crossing. This is not to include any bell and flashing light or other protection. They do not believe, however, that protection will be required at the place. The Department further states that it is assumed that the cost of maintenance of the crossing and the reimbursing of any amounts of previous expenditures, if any, will be borne by others.

As earlier pointed out, a contribution in the sum of \$17,324.78 was made by the Board out of moneys appropriated by Parliament under Vote No. 357 in Schedule B to the Appropriation Act, No. 3, 1937, toward the actual cost of construction of the road diversion which resulted in the closing and elimination of Goat Lake crossing which was a crossing at grade level.

It is, I think, abundantly clear that but for the closing and elimination of the crossing at grade level, no grant would have been made toward the cost of construction of the road diversion. As I view the matter, it is, at least, doubtful that the Board would otherwise have been justified in making the grant from the Vote.

For the applicants it is contended that the main purpose of the grants by the Railways and the Board has been fulfilled. This, because of the fact that by the construction of the road diversion, all through highway traffic is removed from the use of the former Goat Lake crossing and would not again use any new crossing which may be opened at the location. That such a crossing would be limited in its use to the local people of the community. These allegations of fact would, I think, prove to be substantially true.

While the conditions of said Vote 357 are to some degree different from the provisions of the Railway Act governing the making of grants out of the Railway Grade Crossing Fund, their purpose is to a substantial degree similar.

It may, in any event, be pointed out that in *Re Railway Grade Crossing Fund*, 40 C.R.C. 110, 1933, S.C.R. 81, it was held that the Railway Grade Crossing Fund section of the Railway Act did not permit of contributions from the fund in the case of highway diversions whereby rail level crossings not eliminated are relieved from a substantial volume of highway traffic.

I would not go so far as to say that, when a grade level crossing has once been closed under circumstances such as are present here, another crossing at the same point could not, at some later time, be established. But, when a grant is made, as in the present case, for the purpose of eliminating a level crossing, and shortly thereafter an application is made to have it reopened, such applications deserve most earnest and cautious consideration.

The Board has consistently followed the practice that an application for leave to construct a public road or highway over a railway should be made by the authority having jurisdiction over the road or highway, in connection with which the crossing is required. As already pointed out, such authority in this case is the Province of Nova Scotia. The Province has made no such application, nor was it represented at the hearing. And further, Mr. Levy, who appeared

for the Municipality of Chester, made it clear to us that the municipality, as such, disclaimed all responsibility in connection with the application to reopen the crossing, and that the municipality appeared and was interested only in the support of the request of certain of its residents who were most directly concerned in having a crossing re-established over the railway, at the location of the Goat Lake crossing.

The present applicants are not, I think, the proper parties to make the application. There is no other application before us by a party appropriately entitled to so apply. I would, therefore, dismiss the application.

In view of the conclusion which I have reached, much more has perhaps been said than was necessary for a decision. The risk of such a course has been taken here, to the end that the facts and circumstances surrounding the whole matter may be more clearly known and understood by all the parties concerned.

J. A. CROSS.

OTTAWA, December 21, 1944.

I concur,

Hugh WARDROPE,

G. A. STONE.

ORDER No. 65555

In the matter of review and reconsideration of the application of the Municipality of Chester, in the Province of Nova Scotia, and the application on behalf of residents of Chester, under Section 256 of the Railway Act, for an Order authorizing the opening and maintenance of a highway crossing over the Canadian National Railways at Goat Lake, Lunenburg County, which was closed under the Order of the Board No. 54422, dated June 10, 1937.

File No. 36352.27

FRIDAY, the 22nd day of December, A.D. 1944.

J. A. CROSS, K.C., *Chief Commissioner.*

HUGH WARDROPE, *Assistant Chief Commissioner.*

G. A. STONE, *Commissioner.*

Upon hearing the matter at the sittings of the Board held at Chester, Nova Scotia, on the 26th day of October, 1944, in the presence of Counsel for and representatives of the Municipality of Chester and the Railway Company, and what was alleged—

It is ordered: That the application be, and it is hereby, dismissed.

J. A. CROSS,

Chief Commissioner.

ORDER No. 65561

In the matter of the application of L. E. Kipp, Agent, Western Trunk Lines, hereinafter called the "Applicant" for authority to publish rates to Mexican points on less than statutory notice.

File No. 27612.296

WEDNESDAY, the 27th day of December, A.D. 1944.

J. A. CROSS, K.C., *Chief Commissioner.*

HUGH WARDROPE, *Assistant Chief Commissioner.*

Whereas the Applicant advises that the Mexican Government has authorized increases in rates on Mexican traffic, effective January 1, 1945, including a 15 per cent increase which will apply to the division of rates accruing south of Naco, Arizona; authority to make similar publication having been received from the Interstate Commerce Commission:

And whereas the Applicant desires to amend on a uniform date certain rates which apply from Canada to Mexican points.

It is ordered: That the Applicant be, and he is hereby, granted permission to amend his tariffs, as aforesaid, on one day's notice, effective January 1, 1945.

J. A. CROSS,

Chief Commissioner.

ORDER No. 65566

In the matter of the application of the Canadian Freight Association, under the provisions of Part V of The Transport Act, 1938, for approval of an Agreed Charge dated November 20, 1944, between the Canadian National Railways, Canadian Pacific Railway; and Alberta Hi-Way Refineries, Limited, Imperial Oil Limited, McColl Frontenac Oil Company, Limited, and North Star Oil Limited on petroleum products as specified therein, from Calgary, Alberta, to points in the Provinces of Alberta and Saskatchewan specified therein.

File No. 40994.4

WEDNESDAY, the 27th day of December, A.D. 1944.

J. A. CROSS, K.C., *Chief Commissioner.*

HUGH WARDROPE, *Assistant Chief Commissioner.*

J. A. STONEMAN, *Commissioner.*

G. A. STONE, *Commissioner.*

Upon the report and recommendation of the Director, Traffic Department of the Board, notice of the said application having been mailed to the parties named in General Order No. 581, dated January 21, 1939, and no objections having been filed—

It is ordered: That the said Agreed Charge between the Canadian National Railways, Canadian Pacific Railway and Alberta Hi-Way Refineries Limited, Imperial Oil Limited, McColl Frontenac Oil Company, Limited, and North Star Oil Limited, on petroleum products as specified therein, from Calgary, Alberta, to points in the Provinces of Alberta and Saskatchewan specified therein, on file with the Board under file No. 40994.4, be, and it is hereby, approved: the same to become operative on the 1st day of January, 1945; such approval to be for the period from the said 1st day of January, 1945, to the 31st day of December, 1945, both days inclusive.

J. A. CROSS,

Chief Commissioner.

SUMMARY OF ORDERS ISSUED BY THE BOARD

- 65541—Dec. 16—Declaring C.P.R. crossing of highway second west of Williamstown Station, Ont., protected to Board's satisfaction.
- 65542 Dec. 16—Authorizing C.N.R. to operate bridge over Clark's Creek, mileage 258.24 Oshawa Subd., Ont.
- 65543 Dec. 16—Declaring Central Vermont Railway crossing first just south of St. Johns Station, P.Q., protected to Board's satisfaction; present speed limitation of ten miles per hour to be maintained and switching movements to be flagged by member of train crew.
- 65544 Dec. 18—Authorizing C.N.R. to install flashing light signals at crossing of their Lakehead Division over Arthur Street, Fort William, Ont.
- 65545 Dec. 18—Approving location of pipe lines etc. of Imperial Oil Ltd. near C.N.R. tracks at Cadomin, Alta.
- 65546 Dec. 19—Approving under Maritime Freight Rates Act tolls published in tariffs filed by C.N.R. under Sec. 3.
- 65547 Dec. 19—Authorizing C.N.R. to install flashing lights at crossing of Jonquiere-Arvida Highway north of Chauvigny Yard, Town of St. Dominique de Jonquiere, P.Q.
- 65548 Dec. 21—Authorizing Grand River Railway Co. and C.N.R. to operate their trains through interlocking plant at mileage 0.5 Hespeler Subd., near Forbes, Ont.
- 65549 Dec. 21—Authorizing C.P.R. and C.N.R. to operate their trains through interlocking plant at mileage 32.3 St. Thomas Subd., near St. Thomas, Ont.
- 65550 Dec. 21—Declaring C.N.R. crossing of Highway No. 35 first west of station at Wadena, Sask., protected to Board's satisfaction.
- 65551 Dec. 21—Extending time within which to install automatic flashing light signals at crossing of 93rd Street, Edmonton, Alta. (C.N.R.)
- 65552 Dec. 21—Approving relocation of pipe lines etc. of McColl-Frontenac Oil Company, Ltd. near C.N.R. tracks, Moncton, N.B.
- 65553 Dec. 21—Approving under Maritime Freight Rates Act tolls published in tariffs filed by C.N.R. under Sec. 3.
- 65554 Dec. 22—Declaring C.N.R. crossing of highway west of station at Rosedale, B.C., protected to Board's satisfaction.
- 65555 Dec. 22—Dismissing application of R.M. of Chester, N.S. for order authorizing opening and maintenance of a highway crossing over C.N.R. at Goat Lake, Lunenburg County, N.S.
- 65556 Dec. 21—Approving abandonment of operation of C.P.R. Co's Nickel Subd. and wye track between mileage 12.58 and mileage 13.46, Nickel Subd., Ont.
- 65557 Dec. 21—Declaring C.N.R. crossing of Dundas Street, Trenton, Ont., protected to Board's satisfaction; switching movements to be limited to rate of speed not exceeding ten miles per hour.
- 65558 Dec. 21—Declaring C.P.R. crossing of Bruce Street, Durham, Ont., protected to Board's satisfaction.
- 65559 Dec. 22—Authorizing C.P.R. to carry freight traffic over portion of its line from mileage 26.80 near Haynes, to Osoyoos, at mileage 36.38, B.C.
- 65560 Dec. 22—Authorizing Dept. of Public Works of B.C. to construct highway crossing over C.N.R. tracks at Mile 70.21 Fraser Subd., west of McBride, B.C.
- 65561 Dec. 27—Authorizing L. E. Kipp, Agent, Western Trunk Lines, to publish rates to Mexican points on less than statutory notice.
- 65562 Dec. 22—Declaring Oshawa Railway crossing of King Street and Ritson Road, Oshawa, Ont., protected to Board's satisfaction; present speed limitation of 10 miles per hour to be maintained.
- 65563 Dec. 22—Rescinding Order No. 65198, dated Aug. 30, 1944, authorizing C.P.R. to construct branch lines to serve Evans Products Ltd. mileage 1.38 Vancouver & Lulu Island Railway, Vancouver, B.C.
- 65564 Dec. 22—Declaring C.N.R. crossing of Lancaster Street, third east of station, Kitchener, Ont., protected to Board's satisfaction, all movements on side track be flagged over crossing by member of train crew.
- 65565 Dec. 22—Amending Order No. 65471, dated November 27, 1944, authorizing Town of Iberville, P.Q., to construct crossing over C.N.R., Iberville, P.Q.

- 65566 Dec. 27—Approving Agreed Charge between C.N.R., C.P.R. and Alberta Hi-Way Refineries Limited, Imperial Oil Ltd., McColl Frontenac Oil Co., Ltd. and North Star Oil Ltd., on petroleum products from Calgary, Alta. to points in Alta. and Sask.
- 65567 Dec. 23—Declaring C.P.R. crossing of highway near Rosedale, Alta., protected to Board's satisfaction; present speed limitation of ten miles per hour at crossing to be maintained and all movements over crossing protected by member of train crew.
- 65568 Dec. 23—Declaring C.N.R. crossing of highway second south of Clavering Station, Ont., protected to Board's satisfaction; present speed limitation of ten miles per hour at crossing to be maintained.
- 65569 Dec. 26—Approving under Maritime Freight Rates Act tolls published in tariffs filed by C.N.R. under Sec. 3.
- 65570 Dec. 27—Declaring C.P.R. crossing of highway first south of St. Philippe Station, Que., protected to Board's satisfaction.
- 65571 Dec. 27—Declaring C.N.R. crossing of highway fourth east of Courtland, Ont., protected to Board's satisfaction.
- 65572 Dec. 23—Authorizing C.N.R. to install signal on west retaining wall south of draw-span of bridge over Richelieu River at Beloeil, Que.
- 65573 Dec. 26—Authorizing Quebec Central Railway Co. to reconstruct Bridge 29.1 Newport Subd., Que.
- 65574 Dec. 28—Authorizing C.N.R. to operate their passenger trains over crossing of C.P.R. at de Beaujeu, Que.
- 65575 Dec. 29—Declaring C.P.R. crossing of First Street east of station at Morden, Man., protected to Board's satisfaction.
- 65576 Dec. 28—Declaring C.P.R. crossing of highway first east of Wolseley Station, Sask., protected to Board's satisfaction.
- 65577 Dec. 29—Declaring C.P.R. crossing of highway first west of station at High Bluff, Man., protected to Board's satisfaction.
- 65578 Dec. 29—Authorizing C.N.R. to construct spur track to serve Saskatchewan Brewers Association, Prince Albert, Sask.
- 65579 Dec. 28—Approving location and details of C.N.R. station at Nut Mountain, Sask.
- 65580 Dec. 29—Declaring C.N.R. crossing of highway second west of Juniata Station, Sask., protected to Board's satisfaction.
- 65581 Dec. 29—Declaring C.N.R. crossing of highway first east of station at Corinth, Ont., protected to Board's satisfaction.
- 65582 Dec. 29—Approving installation of pipe lines etc. of Imperial Oil Ltd. near tracks of C.N.R. at Ashbridge's Bay, Toronto, Ont.

The Board of Transport Commissioners for Canada

Judgments, Orders, Regulations and Rulings

Vol. XXXIV

Ottawa, February 1, 1945

No. 21

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Application of the Town of Aylmer, in the Province of Quebec, under Sections 178 and 179 of the Railway Act, for an Order directing the Hull Electric Company to provide and replace the spur line running parallel with the Canadian Pacific Railway track from Wychwood, in Aylmer, to about the foot of Main Street in the said Town of Aylmer.

File No. 21781.7

Heard in Ottawa, November 28, 1944.

STONE, G. A., *Commissioner*

This is an application by the Town of Aylmer, under Sections 178 and 179 of the Railway Act, for an Order directing the Hull Electric Company to provide and replace its spur line running parallel with the C.P.R. track from Wychwood to about the foot of Main Street, in the Town of Aylmer.

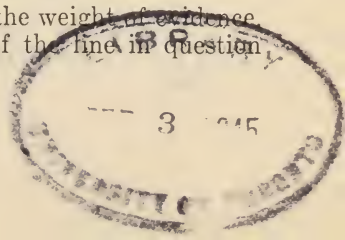
At the hearing of the application in Ottawa on November 28, 1944, Mr. Joseph Ste. Marie appeared for the Applicant, and Mr. H. P. Hill appeared for the Hull Electric Company, hereinafter called the "Railway."

Since the Board's establishment, many applications have been made to the Board for orders requiring the replacement of spur lines, or the continuance of their operation, but this is the first time, as far as I have been able to ascertain, that such an application has been made under Section 178 or Section 179. My view is that the words, "deviation, change or alteration," as used in these Sections refer to a relocation of part of the railway right of way and that these Sections do not apply to an abandonment of a railway line, such as is here in question. To hold otherwise would be, I think, inconsistent with decisions of the Board (to which I shall refer later) as to the right which railway companies had to abandon operation of railway lines prior to the enactment of Section 165-A.

Section 165-A is as follows—

"165-A. The Company may abandon the operation of any line of railway with the approval of the Board, and no company shall abandon the operation of any line of railway without such approval."

This section was enacted in the year 1933. In view of the weight of evidence, I must hold that the Railway abandoned the operation of the line in question



prior to the year 1933. There is a long series of decisions as to the right of railway companies in respect to abandonment of lines. It has uniformly been held that prior to the year 1933, when Section 165-A was enacted, a railway company was at liberty to abandon any portion of its line at any time unless by its Special Act, or by agreement, there was an obligation upon the company to maintain its line. *Rossland Board of Trade v. Great Northern Ry.*, 28 C.R.C. 24; *Caledon v. C.P.R.*, 40 C.R.C. 228; *Re C.P.R. Reston Subdivision*, 53, C.R.T.C. 82, at 106. It seems clear to me that the Board has, in the circumstances of this case, no power to order the respondent to replace its spur line, and the application is dismissed, and Order will issue accordingly.

January 2, 1945.

G. A. STONE.

I concur,

J. A. CROSS.

HUGH WARDROPE.

J. A. STONEMAN.

ORDER No. 65588

In the matter of the application of the Town of Aylmer, in the Province of Quebec, under Sections 178 and 179 of the Railway Act, for an Order directing the Hull Electric Company to provide and replace the spur line running parallel with the Canadian Pacific Railway Company's track from Wychwood, in Aylmer, to about the foot of Main Street, in the said Town of Aylmer.

File No. 21781.7

WEDNESDAY, the 3rd day of January, A.D., 1945.

J. A. CROSS, K.C., *Chief Commissioner.*

HUGH WARDROPE, *Asst. Chief Commissioner.*

J. A. STONEMAN, *Commissioner.*

G. A. STONE, *Commissioner.*

Upon hearing the application at the sittings of the Board held at Ottawa on the 28th day of November, 1944, in the presence of Counsel for the Town of Aylmer and the Hull Electric Company, and what was alleged—

It is ordered: That the application be, and it is hereby, dismissed.

J. A. CROSS,

Chief Commissioner.

ORDER No. 65594

In the matter of the application of The Bell Telephone Company of Canada, hereinafter called the "Applicant Company," for permission to amend its Tariff C.T.C. No. 6716 on short notice.

File No. 27612.297

SATURDAY, the 6th day of January, A.D. 1945.

J. A. CROSS, K.C., *Chief Commissioner.*

HUGH WARDROPE, *Asst. Chief Commissioner.*

J. A. STONEMAN, *Commissioner.*

Whereas the Applicant Company filed with the Board revisions to its general tariff C.T.C. No. 6716, namely, 24th Revised Sheet 3 and 24th Revised Sheet 4,

Section 4, Part III, effective January 1, 1945, to provide for the application of reduced Sunday rates for overseas service to Bermuda and Jamaica;

And whereas the Applicant Company has now been advised that the Bermuda and Jamaica telephone administrations wish to defer the introduction of reduced rates and to continue to apply week-day rates on Sundays—

It is ordered: That the Applicant Company be, and it is hereby permitted to amend its Tariff C.T.C. No. 6716 as aforesaid on one day's notice.

J. A. CROSS,
Chief Commissioner.

ORDER No. 65597

In the matter of Agreed Charge between the Canadian National Railways, Canadian Pacific Railway Company, Northern Alberta Railways Company and certain shippers covering transportation of lumber and forest products between stations in Western Canada specified therein, approved by Order No. 59787, dated October 18, 1940.

File No. 40994.13

SATURDAY, the 6th day of January, A.D. 1945.

J. A. CROSS, K.C., *Chief Commissioner.*
HUGH WARDROPE, *Asst. Chief Commissioner.*
J. A. STONEMAN, *Commissioner.*
G. A. STONE, *Commissioner.*
F. M. MacPHERSON, *Commissioner.*

Whereas Burrows Lumber Co. Ltd., of High Prairie, Alberta, has made application under subsection (6) of Section 35 of The Transport Act, 1938 and represented to the Board that its business will be unjustly discriminated against unless a similar charge be fixed for the transport of its lumber and forest products, and has expressed its willingness to meet and comply with the provisions and conditions of the said Agreed Charge—

It is ordered: That the agreed charges approved by the said Order No. 59787, dated October 18, 1940, be, and they are hereby, fixed for the transport by the said railways of lumber and forest products, as described in paragraph B of the said Agreed Charge, for Burrows Lumber Co. Ltd. from Aggie, Alberta, to the stations referred to in paragraph C(2) of the said Agreed Charge, subject to and upon the terms and conditions contained in the said Agreed Charge; and the Board hereby appoints the date of this Order as the date on which the said charges fixed as aforesaid are to come into operation.

J. A. CROSS,
Chief Commissioner.

ORDER No. 65615

In the matter of Agreed Charge between the Canadian National Railways, Canadian Pacific Railway Company, Northern Alberta Railways Company and certain shippers covering transportation of lumber and forest products between stations in Western Canada specified therein, approved by Order No. 59787, dated October 18, 1940:

File No. 40994.13

SATURDAY, the 13th day of January, A.D. 1945.

J. A. CROSS, K.C., *Chief Commissioner.*

HUGH WARDROPE, *Assistant Chief Commissioner.*

J. A. STONEMAN, *Commissioner.*

G. A. STONE, *Commissioner.*

F. M. MACPHERSON, *Commissioner.*

Whereas Lumber Manufacturers Limited and The Wholesale Fuel Company Limited, of Saskatoon, Saskatchewan, have made application under subsection (6) of Section 35 of The Transport Act, 1938, and represented to the Board that their business will be unjustly discriminated against unless a similar charge be fixed for the transport of their lumber and forest products, and have expressed their willingness to meet and comply with the provisions and conditions of the said Agreed Charge—

It is Ordered: That the agreed charges approved by the said Order No. 59787, dated October 18, 1940, be, and they are hereby, fixed for the transport by the said railways of lumber and forest products, as described in paragraph B of the said Agreed Charge, for Lumber Manufacturers Limited and The Wholesale Fuel Company Limited from Atik, Manitoba, to the stations referred to in paragraph C (2) of the said Agreed Charge, subject to and upon the terms and conditions contained in the said Agreed Charge; and the Board hereby appoints the date of this Order as the date on which the said charges fixed as aforesaid are to come into operation.

J. A. CROSS,
Chief Commissioner.

SUMMARY OF ORDERS ISSUED BY THE BOARD

- 65583 Jan. 2—Approving clearances of canopy over platform at siding serving Dominion Textile Co. Ltd., mileage 1·30 Park Avenue Subd., in the Ste. Marie Ward of the City of Montreal, P.Q. (C.P.R.).
- 65584 Jan. 2—Authorizing Dept. of Highways for Ontario to construct public highway crossing over tracks of C.P.R. Co's. Parry Sound Subd. at Wanup Station, Ont.
- 65585 Jan. 3—Declaring C.N.R. crossing of highway first east of Tisdale Station, Sask., protected to Board's satisfaction; present speed limitation of ten miles per hour to be maintained
- 65586 Jan. 3—Authorizing C.N.R. to construct siding to serve Canadian International Paper Co. across Mine Ecole Road at mileage 40·8 Val d'Or Subd., P.Q.
- 65587 Jan. 3—Approving relocation of two storage tanks to plant of McColl-Frontenac Oil Co. Ltd., near C.P.R. Co's. track at Owen Sound, Ont.
- 65588 Jan. 3—Dismissing application of Town of Aylmer, Que., for an Order directing the Hull Electric Railway Co. to replace spur line track from Wychwood, in Aylmer, to Main St., Aylmer, P.Q.
- 65589 Jan. 3—Declaring C.P.R. crossing of Tupper Street first west of station at Portage la Prairie, Man., present speed limitation of ten miles per hour to be maintained.
- 65590 Jan. 4—Amending Order No. 63513, dated 27th day of April, 1943, authorizing a dual-lane level crossing of Sir Wilfrid Laurier Highway over tracks of Montreal & Southern Counties Railway at mile 3·29, St. Lambert, P.Q.
- 65591 Jan. 5—Approving under Maritime Freight Rates Act tolls published in tariffs filed by C.N.R. under Sec. 3.
- 65592 Jan. 5—Approving location and layout of C.N.R. station building at Miguick, Que.
- 65593 Jan. 4—Authorizing C.N.R. to install flashing lights and bell at crossing of C.N.Rys. and Highway No. 11, at mileage 13·6 Huntsville Subd., Twp. of McAuley, Ont.
- 65594 Jan. 6—Authorizing The Bell Telephone Co. of Canada to amend its Tariff C.T.C. No. 6716 on short notice.
- 65595 Jan. 5—Approving location of C.N.Rys.' station at Zephyr, Ontario.
- 65596 Jan. 5—Declaring C.P.R. crossing of highway at mileage 63·26 Altawan Subd., Alta. protected to Board's satisfaction.
- 65597 Jan. 6—Approving Agreed Charge between the C.N.Rys., C.P.R. Co., Northern Alberta Railways Co. and Burrows Lumber Co., covering transportation of lumber and forest products between stations in Western Canada.
- 65598 Jan. 6—Approving under Maritime Freight Rates Act tolls published in tariffs filed by C.N.R. under Sec. 3.
- 65599 Jan. 9—Approving clearances of coaling plant shelter over receiving track at Mattawa, Ont., mileage 72·2 North Bay Subd. (C.P.R.).
- 65600 Jan. 9—Authorizing C.P.R. to reconstruct Bridge No. 68·0 over Modeste Creek on its Hoadley Subd., Alta.
- 65601 Jan. 9—Approving under Maritime Freight Rates Act tolls published in tariffs filed by Canadian Freight Association under Sec. 3.
- 65602 Jan. 8—Amending Order No. 65552, dated 21st of December, 1944, approving relocation of pipe lines etc., of McColl-Frontenac Oil Co., Ltd., near C.N.R. tracks at Moncton, N.B.
- 65603 Jan. 11—Approving under Maritime Freight Rates Act tolls published in tariffs filed by C.N.R. under Sec. 3.
- 65604 Jan. 11—Declaring Pere Marquette Railway crossing of Queen Street third west of Kingsville Station, Ont., protected to Board's satisfaction.
- 65605 Jan. 11—Declaring C.P.R. crossing of Rosser Road near Winnipeg, Manitoba, at mileage 3·6 Carberry Subd. protected to Board's satisfaction. z
- 65606 Jan. 11—Declaring C.N.R. crossing of 95th Street second east of Edmonton Depot, Alta. protected to Board's satisfaction.
- 65607 Jan. 11—Declaring C.N.R. crossing of highway immediately west of passenger shelter mileage 3·6 Carberry Subd. protected to Board's satisfaction.

- 65608 Jan. 11—Declaring New York Central Railroad crossing of Queen Street, Tilbury, Ont., protected to Board's satisfaction.
- 65609 Jan. 11—Amending Order No. 59356, dated July 9, 1940, authorizing C.P.R. to close portions of the Government surveyed roads at mileage 0.98 and 1.36 White Fox Subd., near Nipawin, Sask.
- 65610 Jan. 11—Approving clearance of loading trestle for Retallack Mines Ltd., at mileage 17.5 of C.P.R. Co's Kaslo Subd. B.C.
- 65611 Jan. 12—Authorizing C.P.R. Co. to use and operate the two bridges over Riviere aux Chiens, Parish of Ste. Therese de Blainville, County of Terrebonne, Que.
- 65612 Jan. 12—Authorizing Quebec Central Railway Co. to reconstruct Bridge No. 52.5 Quebec Subd.
- 65613 Jan. 15—Authorizing Commissioner J. A. Stoneman to sign regulations, orders and other documents during the absence of the Chief Commissioner.
- 65614 Jan. 13—Declaring C.N.R. crossing of Provincial Highway No. 17 second north of Coniston Station, Ont., protected to Board's satisfaction.
- 65615 Jan. 13—Approving Agreed Charge between the C.N.Rys., C.P.R. Co., Northern Alberta Railways Co. and Lumber Mfs. Ltd. and the Wholesale Fuel Co., Ltd., covering transportation of lumber and forest products between stations in Western Canada.
- 65616 Jan. 15—Authorizing C.N.R. to appoint a caretaker at Cavell, Sask.
- 65617 Jan. 16—Declaring C.N.R. crossing of Concession Road No. 7, one mile west of Carlsbad Springs Station, Ont., protected to Board's satisfaction.
- 65618 Jan. 15—Declaring C.N.R. crossing of highway first west of Vonda Station, Sask., protected to Board's satisfaction.
- 65619 Jan. 16—Amending Order No. 65007, dated June 26, 1944, providing for the payment of forty per cent of cost of installing flashing lights at crossing of Waterdown Road and C.N.R. east of Aldershot Station, Ont.
- 65620 Jan. 16—Declaring C.N.R. crossing of highway first east of Casselman Station, Ont., protected to Board's satisfaction.
- 65621 Jan. 16—Declaring C.N.R. crossing of Main Street first 860 feet east of Limoges Station, Ont., protected to Board's satisfaction.
- 65622 Jan. 15—Declaring C.N.R. crossing of highway 270 feet west of Rosedale Station, B.C., protected to Board's satisfaction.
- 65623 Jan. 16—Approving clearances at siding serving John Patterson Construction Co. Limited, at Brampton, Ont. (C.N.Rys.).
- 65624 Jan. 16—Declaring C.N.R. crossing of highway just east of New Glasgow station, Que., protected to Board's satisfaction.

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The Board of Transport Commissioners for Canada

Judgments, Orders, Regulations and Rulings

Vol. XXXIV

Ottawa, February 15, 1945

No. 22

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ORDER No. 65625

In the matter of the application of the British Columbia Telephone Company, hereinafter called the "Applicant Company," under Section 375 of the Railway Act, for approval of an amendment to agreement with The Pacific Telephone and Telegraph Company covering a change in the basis of compensation received by the Applicant Company on the interchange of calls between points in British Columbia and overseas points which are routed through any of the radio-telephone terminals located in the United States.

File No. 32560.25

TUESDAY, the 16th day of January, A.D. 1945.

J. A. STONEMAN, *Commissioner.*

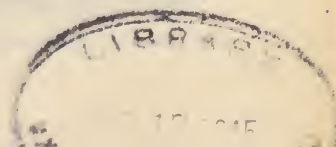
G. A. STONE, *Commissioner.*

Upon the recommendation of the Director, Traffic Department of the Board—

It is ordered: That the said amendment contained in a letter dated December, 28, 1944, from The Pacific Telephone and Telegraph Company to the Applicant Company, a certified copy of which said letter is on file with the Board under file No. 32560.25, be, and it is hereby, approved.

J. A. STONEMAN,

Commissioner.



ORDER No. 65656

In the matter of the application of W. M. Matthews, Agent, hereinafter called the "Applicant," on behalf of Canadian National Railways and Canadian Pacific Railway Company, for permission to publish rates on hay between points in the Province of Quebec on less than statutory notice.

File No. 27612.291

WEDNESDAY, the 24th day of January, A.D. 1945.

J. A. CROSS, K.C., *Chief Commissioner.*HUGH WARDROPE, *Assistant Chief Commissioner.*J. A. STONEMAN, *Commissioner.*

Whereas the Applicant advises that a serious shortage of hay now exists at various points in the Province of Quebec, and in order to relieve the situation the railways desire to make prompt and economical movement of hay to various sections of the province by reissuing tariffs Canadian National Railways CTC No. E.3889 and Canadian Pacific Railway CTC No. E.5032, on short notice, and adding new shipping points and destinations to the lists already contained therein—

It is ordered: That the said Railway Companies be, and they are hereby, permitted to reissue their tariffs as aforesaid effective to-day.

J. A. CROSS,
Chief Commissioner.

ORDER No. 65667

In the matter of the application of The Georgian Bay Tourist Company of Midland, Limited, hereinafter called the "Applicant," for a licence under Section 10 of The Transport Act, 1938.

File No. 42076.29

FRIDAY, the 26th day of January, A.D. 1945.

J. A. CROSS, K.C., *Chief Commissioner.*HUGH WARDROPE, *Assistant Chief Commissioner.*J. A. STONEMAN, *Commissioner.*

Upon the report and recommendation of the Assistant Director, Traffic Department of the Board—

It is ordered: That Licence Number CTC (W.T.) 116 be issued to the Applicant for the period of one year commencing on the 15th day of January, 1945, licensing the following ship, namely:—

<i>Vessel Name</i>	<i>Official Registry No.</i>	<i>Gross Tonnage</i>
<i>Midland City</i>	100662	580

to transport passengers and/or goods by water between all ports or places in Canada on Georgian Bay.

J. A. CROSS,
Chief Commissioner.

ACCIDENTS REPORTED TO THE OPERATING DEPARTMENT BOARD OF TRANSPORT COMMISSIONERS FOR CANADA, DECEMBER, 1944

Railway Accidents.....202 with 27 killed and 237 injured
Level Crossing Accidents..... 47 with 14 killed and 65 injured

	Killed	Injured
Passengers	2	55
Employees	12	168
Others	27	79
Totals	41	302

DETAILS OF ACCIDENTS AT HIGHWAY CROSSINGS

Accidents	K.	I.	
NOVA SCOTIA			
1	—	2	Automobile drove onto crossing in front of approaching train and was struck. Licence N.S. 82643.
1	1	—	Auto truck drove onto crossing in front of approaching train and was struck. Licence, N.S. C-1-22-79.
1	—	1	Automobile drove onto crossing in front of approaching train and was struck. Licence, N.S. 51368.
NEW BRUNSWICK			
1	—	1	Auto truck drove onto crossing in front of approaching train and was struck. Licence, N.B. 7709.
QUEBEC			
1	—	1	Automobile struck Track Lorry car. Licence, Que. T-4428.
1	—	2	Automobile drove onto crossing in front of approaching train and was struck. Licence, Que. 18578-F.
1	—	2	Automobile ran into side of train. Licence, Que. 124805.
1	—	3	Automobile ran into side of train. Licence, Que. 97-103.
1	—	1	Auto truck drove onto crossing in front of approaching train and was struck. Licence not given.
1	—	1	Gasoline truck drove onto crossing in front of approaching train and was struck. Licence, Que. F-5936.
ONTARIO			
1	—	1	Pedestrian walked onto track in front of approaching train and was struck.
1	—	1	Automobile ran into side of train. Licence, Ont. 66-R-70.
1	—	1	Automobile drove onto crossing in front of approaching train and was struck. Licence, Ont. 9-A-85.
1	1	—	Automobile ran into side of train. Licence, Ont. 703-P-3.
1	—	1	Automobile drove onto crossing in front of approaching train and was struck. Licence, Ont. 54-V-44.
1	—	1	Automobile ran into side of train. Licence, Ont. 27611-C.
1	—	1	Automobile ran into side of train. Licence, Ont. 618-5.
1	1	—	Auto truck drove onto crossing in front of approaching train and was struck. Licence, Ont. 61189-C.
1	2	—	Automobile drove onto crossing in front of approaching train and was struck. Licence, Ont. 223-M-7.
1	—	1	Auto truck drove onto crossing in front of approaching train and was struck. Licence, Ont. 62577-C.
1	—	1	Automobile ran into side of train. Licence, Ont. 42-U-71.
1	—	1	Automobile drove onto crossing in front of approaching train and was struck. Licence, Ont. 526-F-9.
1	—	4	Automobile ran into side of train. Licence, Ont. T-2-234.
1	—	2	Hydro truck drove onto crossing in front of approaching train and was struck. Licence, Ont. L-3754.

Accidents	K.	I.	
ONTARIO— <i>Concluded</i>			
1	1	2	Automobile drove onto crossing in front of approaching train and was struck. Licence, Ont. 12-W-43.
1	—	1	Auto truck drove onto crossing in front of approaching train and was struck. Licence, Ont. 77655-C.
1	—	1	Auto truck drove onto crossing in front of approaching train and was struck. Licence not given.
1	3	—	Automobile drove onto crossing in front of approaching train and was struck. Licence, Ont. K-75-72.
1	—	1	Automobile drove onto crossing in front of approaching train and was struck. Licence not given.
1	1	—	Auto truck drove onto crossing in front of approaching train and was struck. Licence not given.
1	1	—	Pedestrian walked onto track in front of approaching train and was struck.
1	—	2	Automobile drove onto crossing in front of approaching train and was struck. Licence, Ont. 3-J-577.
1	—	2	Automobile ran into side of train. Licence not given.
1	—	1	Automobile ran into side of train. Licence, Ont. 388-R-5.

MANITOBA

1	—	4	Automobile struck Track Motor car. Licence, Man. 58-655.
1	—	2	Automobile ran into side of train. Licence, Man. 31-360.
1	—	2	Automobile ran into side of train. Licence, Man. 17325.
1	—	3	Automobile ran into side of train. Licence, Man. D-578.
1	—	1	Automobile drove onto crossing in front of approaching train and was struck. Licence not given.
1	—	1	Army truck ran into side of train. Licence, Man. 16043.

SASKATCHEWAN

1	—	3	Auto truck drove onto crossing in front of approaching train and was struck. Licence, Sask. C-1820.
1	2	2	Automobile drove onto crossing in front of approaching train and was struck. Licence, Sask. 49-050.

ALBERTA

1	—	3	Auto truck drove onto crossing in front of approaching train and was struck. Licence, Alta. F-347.
1	—	2	Automobile ran into side of train. Licence, Alta. 99673.

BRITISH COLUMBIA

1	1	—	Automobile drove onto crossing in front of approaching train and was struck. Licence, B.C. SB-352.
1	—	2	Automobile drove onto crossing in front of approaching train and was struck. Licence, B.C. 34-926.
1	—	1	Automobile drove onto crossing in front of approaching train and was struck. Licence not given.

Of the 47 accidents at Highway Crossings, 38 occurred at Unprotected Crossings and 9 at Protected Crossings. Thirty of the accidents occurred after sunrise and seventeen after sunset.

February 3rd, 1945.

SUMMARY OF ORDERS ISSUED BY THE BOARD

- 65625 Jan. 16—Approving amendment to agreement of the British Columbia Telephone Co. with The Pacific Telephone and Telegraph Co.
- 65626 Jan. 16—Declaring C.P.R. crossing of highway near Kamloops, B.C., protected to Board's satisfaction.
- 65627 Jan. 16—Amending Order 64773, dated April 27, 1944, providing for payment out of Grade Crossing Fund for installation of additional track circuit at mileage 37·77 Dundas Subd., Ont.
- 65628 Jan. 16—Approving under Maritime Freight Rates Act tolls published in tariffs filed by C.P.R. under Sec. 9.
- 65629 Jan. 16—Approving under Maritime Freight Rates Act tolls published in tariffs filed by Canadian Freight Association under Secs. 3 and 9.
- 65630 Jan. 17—Approving location and details of C.N.R. shelter at Horwood Lake, Ont.
- 65631 Jan. 17—Approving location of pipe lines etc. of Union Oil Co., Ltd. near C.P.R. tracks at Nelson, B.C.
- 65632 Jan. 17—Authorizing C.N.R. to cross north and south road allowance between Secs. 27 and 28, Twp. 50, Range 3, West 4th Meridian, Alberta.
- 65633 Jan. 17—Declaring C.N.R. crossing of Highway No. 8 second north of Fresniere Station, Que., protected to Board's satisfaction.
- 65634 Jan. 18—Approving under Maritime Freight Rates Act tolls published in tariffs filed by C.P.R. under Sec. 9.
- 65635 Jan. 18—Authorizing Toronto Transportation Commission to remove diamond at their crossing with C.N.R. on Keele St., Toronto, Ont.
- 65636 Jan. 18—Declaring C.N.R. crossing of Memorial Boulevard, Port Arthur, Ont., protected to Board's satisfaction; present speed limitation of fifteen miles per hour to be maintained.
- 65637 Jan. 18—Approving revised location of pipe lines, etc. of Imperial Oil Ltd. near C.N.R. tracks at Stony Plain, Alta.
- 65638 Jan. 18—Approving location of pipe lines etc. of Imperial Oil Ltd. near C.N.R. tracks at Meota, Sask.
- 65639 Jan. 18—Approving location of pipe lines, etc. of McColl-Frontenac Oil Company Ltd. near C.P.R. tracks at Manitou, Man.
- 65640 Jan. 18—Declaring C.N.R. crossing of Booth Street, Ottawa, Ont., protected to Board's satisfaction.
- 65641 Jan. 18—Approving clearances at siding serving Steel Company of Canada, Ltd., at St. Ambroise Street, Montreal, Que. (C.N.Rys.)
- 65642 Jan. 18—Approving location of C.P.R. Co's No. 3 portable enclosed shelter at Dand, Man.
- 65643 Jan. 18—Approving under Maritime Freight Rates Act tolls published in tariffs filed by C.N.R. under Sec. 3.
- 65644 Jan. 18—Declaring C.N.R. crossing of Carling Avenue, Twp. of Nepean, County of Carleton, Ont., protected to Board's satisfaction.
- 65645 Jan. 18—Declaring C.N.R. crossing of St. Davids Road near Merritton, Ont., protected to Board's satisfaction.
- 65646 Jan. 18—Declaring C.N.R. crossing of highway east of Riversdale Station, N.S., protected to Board's satisfaction.
- 65647 Jan. 15—Approving location of C.N. Rys' standard freight and passenger shelter at Le Jac, B.C.
- 65648 Jan. 20—Approving under Maritime Freight Rates Act tolls published in tariffs filed by Sydney and Louisburg Railway Co. under Sec. 9.
- 65649 Jan. 15—Approving location of Special Shelter of C.N.R. at mileage 104·03 Fraser Subd., B.C.
- 65650 Jan. 20—Authorizing C.N.R. to operate highway bridge at mileage 19·58 Dundas Subd., Ont.
- 65651 Jan. 22—Amending Order No. 65578 authorizing C.N.R. to construct spur track to serve Saskatchewan Brewers Association, Prince Albert, Sask.
- 65652 Jan. 23—Approving under Maritime Freight Rates Act tolls published in tariffs filed by C.N.R. under Sec. 3.
- 65653 Jan. 23—Approving location of pipe lines, etc. of Codette Consumers Co-Operative Association Ltd. near C.P.R. tracks at Codette, Sask.

- 65654 Jan. 23—Declaring Vancouver, Fraser Valley and Southern Railway crossing of Westminster Ave. first west of Murrin Station, B.C., protected to Board's satisfaction.
- 65655 Jan. 23—Authorizing Quebec Central Railway Company to reconstruct Bridge No. 29-5 New Port Subd.
- 65656 Jan. 24—Authorizing C.N.R. and C.P.R. to reissue their tariffs on hay between points in Que. on less than statutory notice.
- 65657 Jan. 23—Approving clearances of coal shed over trestle on C.P.R. spur serving James Sowards Coal Co. at mileage 103-25 Kingston Subd., Kingston, Ont.
- 65658 Jan. 23—Extending time within which C.N.R. were required to install two wigwags and one bell at crossing of Norwich Street, Woodstock, Ont.
- 65659 Jan. 23—Extending time within which C.N.R. were required to install additional protection at crossing of Wilson Street, Woodstock, Ont.
- 65660 Jan. 23—Authorizing C.P.R. to install two flashing lights and one bell at crossing of Montgomery Road, Twp. of Etobicoke, County of York, Ont.
- 65661 Jan. 29—Amending Order No. 41083, dated July 16, 1928, authorizing Michigan Central Railroad Co. to install protection at crossing of Provincial Highway No. 2, two and one-half miles east of Tilbury, Ont.
- 65662 Jan. 25—Declaring C.N.R. crossing of Main Street, first east of station at Dauphin, Man., protected to Board's satisfaction; present speed limitation of ten miles per hour to be maintained.
- 65663 Jan. 25—Authorizing C.P.R. to construct branch line of railway to serve W. H. Norman at mileage 101-34 Kingston Subdivision, Concession west of Great Catarqui River, Tp. of Kingston, Ont.
- 65664 Jan. 26—Authorizing C.P.R. to construct branch line of railway to serve Western Gypsum Products Limited, in Parish of St. James, Winnipeg, Man.
- 65665 Jan. 26—Approving agreement between The Bell Telephone Co. and Omer Lacoste (Le Telephone du Nord) dated October 21, 1940.
- 65666 Jan. 26—Declaring C.N.R. crossing of highway first north of Ardley Station, Alta., protected to Board's satisfaction.
- 65667 Jan. 26—Authorizing issuing of Licence No. C.T.C. (W.T.) 116 to The Georgian Bay Tourist Company of Midland, Limited.
- 65668 Jan. 26—Rescinding Order No. 65622, dated January 16, 1945, referring to accident at mileage 65-14 Yale Subd., Rosedale, B.C.
- 65669 Jan. 26—Declaring New York Central Railroad crossing of Southwick Street, St. Thomas, Ont., protected to Board's satisfaction.
- 65670 Jan. 27—Declaring Great Northern Railway crossing of highway about 2,000 feet north of station in New Westminster, B.C., protected to Board's satisfaction.
- 65671 Jan. 26—Approving plan of C.N.Rys. showing changes to interlocking plant at their crossing of tracks of Imperial Oil Ltd. at Montreal East, Que.
- 65672 Jan. 29—Declaring C.P.R. crossing of Main Street, first crossing west of station platform at Buckingham Junction, Que., protected to Board's satisfaction.
- 65673 Jan. 27—Approving under Maritime Freight Rates Act tolls published in tariffs filed by C.P.R. under Sec. 9.
- 65674 Jan. 27—Approving relocation of C.N.R. spur track on Lauriston Street, Saskatoon, Sask.
- 65675 Jan. 29—Approving location of pipe lines etc. of McColl-Frontenac Oil Company Ltd. near C.P.R. tracks at Kerrobert, Sask.
- 65676 Feb. 6—Approving Agreed Charge between C.N.R., C.P.R., Northern Alberta Railways Co. and Fort St. John Lumber Co. Ltd. to cover transportation of lumber between stations in Western Canada.
- 65677 Jan. 30—Authorizing C.P.R. to operate its passenger trains over crossing with C.N.R. at North Essa, Ont.
- 65678 Jan. 30—Authorizing C.P.R. to operate its passenger trains over crossing of C.N.R. at Essa South, Ont.
- 65679 Jan. 29—Amending Order No. 65180, dated August 23, 1944, authorizing protection at Wellington Street crossing, Aurora, Ont. (C.N.Rys.)
- 65680 Jan. 30—Declaring C.N.R. crossing of Russell Street third crossing east of Arnprior Station, Ont., protected to Board's satisfaction; present speed limitation of ten miles per hour to be maintained.
- 65681 Jan. 31—Rescinding Order No. 64879, dated May 25, 1944, with reference to C.N.R. crossing just west of Clova Station, Que.

- 65682 Jan. 31—Declaring C.P.R. crossing of highway at mileage 45·37 Outlook Subdivision, Sask., protected to Board's satisfaction.
- 65683 Jan. 31—Declaring C.P.R. crossing of highway first south of Lang Station, Sask., protected to Board's satisfaction.
- 65684 Jan. 31—Declaring C.N.R. crossing of highway first west of Drumheller railway Station, Alta., protected to Board's satisfaction; present speed limitation of ten miles per hour to be maintained.
- 65685 Jan. 31—Declaring C.P.R. crossing of Metcalfe Street, Guelph, Ont., protected to Board's satisfaction; present speed limitation of ten miles per hour to be maintained.

The Board of Transport Commissioners for Canada

Judgments, Orders, Regulations and Rulings

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Application of Canadian Car Demurrage Bureau for a ruling as to the proper interpretation of Rule 1 of the Car Demurrage Rules, embodied in W. J. Collins' Tariff C.T.C. No. 4, issued pursuant to the Board's General Orders Nos. 201 and 349; and

Consideration of amendments of the Car Demurrage Rules in respect to the following matters referred to in the letter of the Secretary of the Board, dated January 14, 1943, namely:—

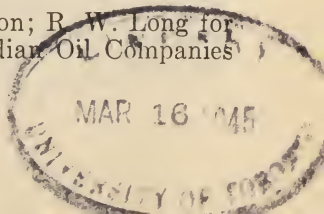
1. (a) Practice of owners or lessees of private cars leasing or sub-letting said cars for varying periods of time to owners of private sidings to whom they ship traffic in these private cars, thus exempting delays to such cars on consignee's tracks from the application of the Demurrage Rules.
- (b) Practice of owners or lessees of private cars leasing portions of private siding either of parties to whom they ship or parties from whom they receive traffic in these private cars, thus exempting delays to such cars on said tracks from the application of the Demurrage Rules.
2. Leasing by railways of railway tracks to shippers or consignees, enabling loaded private cars to be held on such tracks and be exempt from application of the Demurrage Rules.
3. Whether Demurrage Rules should apply on private cars regardless of whether they are on private tracks.
4. Whether provision should be made for no demurrage at all to be charged on private cars.

(File No. 1700.99)

Mr. A. K. Dysart and Mr. G. D. McKay appeared, respectively, for the Canadian National Railways and the Canadian Pacific Railway Company; and also appeared for the Canadian Car Demurrage Bureau.

The following made representations:—

S. B. Brown for the Canadian Manufacturers' Association; R. W. Long for Allied War Supplies Corporation; C. E. Wilfung for Canadian Oil Companies



Limited; R. Winfield for British American Oil Company; G. L. Rose for Shell Oil Company; V. Smith for McColl Frontenac Oil Company, Limited; J. C. Sloss for Nichols Chemical Company, Limited; W. J. Rae for Lever Brothers, Limited; M. J. Whalen for The Barrett Company, Limited; W. E. Kleinsteiber for Imperial Oil Limited; Walter C. Thompson for Goodyear Tire & Rubber Company; Howard W. Umphrey for Canadian Industries, Limited; F. T. Parker for Canadian Industries, Limited; A. W. Fildes for Canadian Pulp & Paper Association and Canadian International Paper Company; L. F. Van Kleeck for Canadian Pulp & Paper Association and Brown Corporation; George Paul for Swift Canadian Company, Limited.

JUDGMENT

WARDROPE, ASSISTANT CHIEF COMMISSIONER:

General Order of the Board No. 201, dated August 1, 1917, as amended by General Orders No. 220, October 11, 1918; No. 349, 23rd November 1921; and No. 422, August 13, 1925, prescribes the Canadian Car Demurrage Rules.

Rule No. 1 of General Order No. 201 prescribes the cars to be subject to the Rules, and reads as follows:—

RULE 1.—CARS SUBJECT TO THESE RULES

Cars held for or by consignor or consignee for loading, unloading, forwarding directions, or for any other purpose.

EXCEPTIONS

- (a) Private cars (loaded or empty) on private tracks of the car owner.
- (b) Empty private cars stored on carriers' or private tracks.
- (c) Cars containing freight for transshipment to vessel when moving on through bill of lading and held at railway terminal awaiting boat.

The above Rule and Exceptions thereto are embodied in W. J. Collins' tariff C.T.C. No. 4.

Although the Rule is silent on the point, the Canadian Car Demurrage Bureau (hereinafter referred to as the "Bureau") over the years has interpreted Exception (a) above to the effect that a written bona fide lease of a private car to a consignee who has a private siding or a similar lease of trackage on which a private car may be placed, is the equivalent of ownership, thus bringing such cars, either themselves leased or on leased tracks as the case may be, within Exception (a).

In such cases, however, the Bureau has insisted that a copy of such lease should be filed with the railway concerned or with the Bureau, or that it be presented for examination.

Two or more member lines of the Bureau have stated that in their opinion a verbal lease of equipment would be equally within the rights of private car owners.

To this proposition the Bureau through its Manager, W. J. Collins, objects on the ground that this interpretation is too broad and would permit evasiveness, abuse and discrimination with respect to the proper application of tariff C.T.C. No. 4.

The Bureau holds the view that the benefits of Exception (a) can be obtained only by a bona fide written lease, and asks the Board for a ruling on the point.

The substance of Rule No. 1 and Exceptions thereto has been in effect since 1906, and to the date of this application the only ruling by the Board with regard thereto was under date of March 10, 1916, in *re* Nichols Chemical Company, Limited, of Toronto, and reported in vol. 6 p. 8 of the Board's Judgments and Orders.

In considering the application, the Board took cognizance of the scope the question embraced and the paucity of views relative thereto. Consequently, before attempting to arrive at a decision it caused a circular to be sent to numerous interested parties inviting their views upon the matter.

This circular drew attention to the practices which had developed, practices which in many instances would permit avoidance of payment of demurrage on private cars held beyond the free time allowed under the Rules.

It also suggested that consideration might be given by those making submissions as to whether the Rule might not be amended so as to apply the Demurrage Rules on private cars regardless of whether or not they might be on private tracks, or to make provision for no demurrage at all to be charged on private cars.

In view of the numerous and conflicting submissions received the Board decided to put the original application down for an open hearing. In doing so it enlarged the application to include for consideration by the parties the additional following points with a view to throwing further light on the whole subject and, if then considered advisable, making appropriate amendment to the Rule:—

1. (a) Practice of owners or lessees of private cars leasing or sub-letting said cars for varying periods of time to owners of private sidings to whom they ship traffic in these private cars, thus exempting delays to such cars on consignee's tracks from the application of the demurrage rules.
- (b) Practice of owners or lessees of private cars leasing portions of private siding either of parties to whom they ship or parties from whom they receive traffic in these private cars, thus exempting delays to such cars on said tracks from the application of the demurrage rules.
2. Leasing by railways of railway tracks to shippers or consignees, enabling loaded private cars to be held on such tracks and be exempt from the application of the demurrage rules.
3. Whether demurrage rules should apply on private cars regardless of whether they are on private tracks.
4. Whether provision should be made for no demurrage at all to be charged on private cars.

Notices were sent to some sixty-five interested parties, including carriers under the Board's jurisdiction, Boards of Trade, Canadian Manufacturers' Association, Canadian Industrial Traffic League, owners and users of tank cars, major oil companies, etc.

Insofar as the original application is concerned the carriers represented at the hearing agreed that as the Exception to Rule No. 1 is now being observed, the right to make a verbal lease of equipment could not seriously be challenged, but, as Counsel for the Canadian Pacific Railway pointed out, it would not necessarily follow that a statement by a shipper to such effect must necessarily be accepted.

Again, in the submissions of the Canadian National Railways, it was suggested that a statement contained in the bill of lading to the effect that a car or cars had been leased to a specific person or corporation should be accepted at its face value so long as the Rule is observed in the present manner.

A summary of all the submissions on file and made at the hearing, including those of the carriers, clearly indicates the consensus of opinion is that while admitting a lease may be made verbally, to avoid difficulties and misunderstandings there should be at least a written lease filed with the railway while the Rule is observed in its present manner.

II

Dealing with the items or propositions raised by the Board, and in their order above mentioned, I will attempt to summarize the views the parties addressed to the Board at the hearing, and also those on file.

It may be said at once that there was a conscientious endeavour on the part of all to advance proper and bona fide suggestions.

Some of the views are conflicting, of course, because the industrial and transportation problems of few of private tank car owners and users are identically the same. In parenthesis I may say that although the Rule as it stands refers simply to private cars, submissions received by the Board dealt solely with private tank cars.

But generally speaking these fall into fairly definite groups. There is the group comprised of the major oil companies. Then there is another group, a smaller one, which utilizes tank cars for the transportation of dangerous commodities. A further group utilizes tank cars principally for receiving at seaboard heavy shipments of vegetable oils, etc., and returning in large numbers to plant for processing.

Then there is a miscellaneous group.

Items 1 (a) and (b) are closely related and these may be dealt with together.

On these points, and generally speaking, the carriers and major oil companies are opposed to the leasing of private cars and tracks for the purpose of avoiding payment of demurrage. On the other hand, those owners or users of private tank cars for the purpose of transporting dangerous commodities feel that the present practice of leasing and consequent avoidance of demurrage should be continued. The latter view is also supported by other users of tank cars.

The following summaries of some of the views expressed before the Board will, I think, adequately illustrate the general attitude of those most concerned.

The carriers while admitting that the question of whether demurrage should or should not apply to private tank cars or private cars on private siding is one that more nearly concerns the shippers rather than the carriers, do not favour as a general principle any relaxation in the present Rules. On the contrary it is their suggestion that if demurrage is to be charged at all on private cars there should be a tightening of the Rules rather than any easing of the same. In short, their view would seem to be that every effort should be made to discourage the practice of leasing of cars to temporary lessees or the making of temporary leases of sidings, which practice lends itself to the defeat of the object of the Demurrage Rules.

CANADIAN INDUSTRIES LIMITED owns or leases from the Canadian General Transit Company under long term leases some 254 tank cars. Of these 143 are owned by the company and 111 are leased from the Canadian General Transit Company.

This company does not lease its cars to its consignees. It does, however, lease portions of its sidings to others, also portions of sidings of its consignees—in the main those which handle compressed gas and principally liquid chlorine.

On behalf of the company it was stated that liquid chlorine is an extremely hazardous commodity to handle. It is loaded under supervision at the company's

works into especially constructed tank cars, the cost of each being approximately \$11,000.

The consignees draw their requirements from these cars into their works as they require the material. Thus these cars in this manner are used as places of storage, none of the company's consignees having installed storage tanks for the storage of liquid chlorine. Consequently, these tank cars are held by the consumer of the product for varying lengths of time depending upon the operation involved. In the statement prepared by this company it was shown quite frequently that some of these cars will remain on a consignee's siding for weeks at a time.

This company stated it has leased a portion of the private sidings of some twenty-three of its consignees with the result that no demurrage is assessed on such privately owned tank cars necessarily and commonly used by the consignee as a storage facility. The carriers are given notice of the leases of these sidings.

The company's submission is that this practice of using tank cars for storage purposes is necessary in the interest of safety when the transportation of such a hazardous commodity as liquid chlorine is involved, and that if their consignees were forced to erect storage tanks for the storage of liquid chlorine there would be formidable and additional hazards to the public and those immediately concerned in the extra handling required. It was stated for the company that this practice is followed with regard to this commodity throughout Canada and the United States.

Consequently, this company holds the view that since the facilities of the carriers are not involved, that privately owned tank cars held on private sidings of consignees leased to the owners (or lessees) of such tank cars should not be subject to demurrage, and that the present practice of the nonassessment of demurrage in such cases is neither unreasonable nor unjustly discriminatory. While it recognizes the desirability of prompt release of private tank cars, it suggests, however, that the assessment of a penalty for nonrelease is not the proper function of the carrier. The latter does not supply the equipment but in lieu thereof allows the owner of a private tank car $1\frac{1}{2}$ c per mile travelled, loaded or empty. It suggests that the means of providing machinery for the purpose of effecting prompt release of private cars should be left with the car owners themselves, or in present days with the Transport Controller.

The views of this company were supported or shared to a less or greater degree by other companies and industries subject to similar problems.

The position of the oil companies shortly can be stated by referring to the submissions of one of them as follows;—

"In item No. 1(a) you mentioned the practice of owners or lessees of private cars leasing or subletting said cars for varying periods of time to owners of private sidings to whom they ship traffic in these private cars, thus exempting delays to such cars on consignee's tracks from the application of demurrage rules.

"Submissions: To prevent any possible discrimination as between one consignee and another, we suggest that above practice be discontinued. We are assuming, however, that reference is not being made to cases where the owner or lessee of private cars load cars to their own branches served by their own private siding.

"Then, the Board's item 1(b). Practice of owners or lessees of private cars leasing portions of private siding either of parties to whom they ship or parties from whom they receive traffic in these private cars, thus exempting delays to such on said tracks from the application of the demurrage rules.

"Submissions: To prevent discrimination between one party and another we suggest that the above mentioned practice also be discon-

tinued. We are assuming that the above item 1(b) does not apply to private cars loaded by the owners or lessees thereof to their own branches served by their own private siding."

These submissions generally express the views of other oil companies which appeared before the Board.

SWIFT CANADIAN COMPANY LIMITED uses the following language;—

"We have not leased or sublet any of our tank cars or leased part of our private siding. However, we do not think we should be denied the right if in the course of our business it is desirable to do so.

"We believe that in general practice private cars are being handled under genuine and bona fide leases and, therefore, owners or lessees should not be restricted in their right to lease or sublet when circumstances warrant."

LEVER BROTHERS holds the view that the possibility of unjust discrimination arising from the leasing or subletting of cars to consignees under the practice in 1(a) is negligible provided the lease is in written form, and suggests that a standard form of lease could be designed to suit various conditions, and that the car owners should be required to use them. The suggestion is further made that they could be printed in triplicate—one copy for lessor, one copy for lessee and one for the railway agent at destination.

However, with regard to item 1(b), this company holds a different view. It suggests that there should be no leasing or at any rate little justification for leasing of private sidings except under only the most unusual conditions on approval of the Board. It suggests the car itself only should be leased.

The above summarized views of certain of the parties, I think, typify and reflect the diversified thoughts on the practice mentioned in item 1(a) and (b).

III

Taking item No. 2 which deals with the practice of leasing by railways of railway tracks to shippers or consignees, thus enabling loaded private cars to be held on such tracks and be exempt from application of Demurrage Rules, we find the principal carriers represented indulge in this practice but apparently to a limited extent.

Both the Canadian National Railways and the Canadian Pacific Railway expressed to the Board dissatisfaction with the custom. Both railways furnished particulars of certain cases where they have leased a portion of their tracks for storage of tank cars. But, as the Canadian Pacific Railway expressed it, nearly all of their leases have either expired or been cancelled as this company feels the practice to be an undesirable one.

The major oil companies expressed their disapproval of the practice when it is used for the sole purpose of avoiding payment of demurrage.

CANADIAN INDUSTRIES LIMITED have no arrangement whereby their cars may be held on railway tracks for the purpose of avoiding payment of demurrage under the Rules.

On the other hand, certain industries, such as SWIFT CANADIAN COMPANY LIMITED and LEVER BROTHERS, felt that under certain circumstances the practice was not unreasonable. Industries such as these latter two, they pointed out, move certain of their materials from tank steamers at seaboard to plant in tank cars in lots of 20 to 40 cars. With such an influx of cars at the plant it would be impossible to unload all of these at once.

The position of these companies is shortly stated by one of them in the following language:—

“The occasional occurrence of deliveries in excess of a consignee-owned track capacity should not, be made an excuse for arbitrary and pointless demurrage charges.”

So we find that with regard to item 2 above mentioned there is also a diversity of opinion seemingly largely governed by the requirements and practices of the particular industry concerned.

IV

Dealing with item 3 which puts forth the proposition as to whether demurrage rules should apply on private cars regardless of whether they are on private tracks, it can be briefly said that the views of the parties concerned completely negated this suggestion, subject, however, to some qualification by the two principal railways. Each of the latter in its own way approached this question from the viewpoint that it might be advisable to place private cars upon the same footing as railway owned cars, but that if the Board considered this to be too drastic a measure, exemptions from the Rule might be provided by the making of bona fide leases.

V

The last item to be dealt with upon which the views of the parties were expressed is as to whether provision should be made that no demurrage at all should be charged on private cars.

The general expression of opinion here, with the exception of two industries which considered that no demurrage should be charged at all on private cars, was that any such complete relaxation of the demurrage rules regarding private cars would be a retrograde step, and not in the interests of tank car shippers or their consignees; further, that such a step would create in many instances cases of unjust discrimination. The latter thought can be shortly expressed in an extract from the Canadian Manufacturers' Association's brief which reads as follows:—

“If adopted it would create unjust discrimination in those cases where such cars were in fact in railway service and held on tracks other than those of the owner.”

One of the oil companies in expressing its thought on this matter, and which is generally the opinion of other oil companies, stated as follows:—

“This company submits that if no demurrage was to be charged on private cars there would be a tendency for consignees—

- “(a) to become careless in their checking and order future stock in advance of requirement with consequent delay to cars;
- “(b) to install storage tanks of smaller capacity than usual knowing the tank cars could be held and delayed under load until there was room in the storage tank to accommodate full contents;
- “(c) to promote a tendency to use tank cars for storage purposes instead of installing permanent storage tanks.”

Insofar as the railways are concerned, their viewpoint would seem to be that they would not favour any relaxing of existing controls and are opposed to any movement designed to free private cars entirely from the application of the rules.

VI

Jurisdiction in this Board under the Railway Act to promulgate demurrage rules affecting private cars has not definitely been challenged. The question was not in issue, and I do not attempt to deal with it here but will act on the assumption that the Board has such jurisdiction, an assumption fortified by the longevity of the present rule.

On the other hand, more than once has the propriety of the carriers to assess and collect demurrage on private cars been raised. This contention is based on the facts that the carrier has no vested interest in such cars, it furnishes no such cars (except to a very limited degree), and that the rates charged by the carrier include the placement of the private car on a private siding or elsewhere.

While there may be some merit to such a contention, I think it was evident that the bulk of the owners and users of tank cars not only favour demurrage but the enforcement of the same by the carrier rather than any arrangement that they themselves may arrive at to effect the prompt release of their cars.

It can be seen that the subject of promulgating fair and reasonable rules for assessing demurrage against private cars is not without difficulties.

The present rule has been in effect for many years, but obviously, interpretation placed on this rule by the Demurrage Bureau relaxing it to the extent shown, permits of potential abuse and evasiveness.

On the other hand, it must be considered carefully, in view of the problems peculiar to some of the parties, whether or not relaxation in some instances, at any rate, is not a reasonable step.

Arbitrary imposition of the demurrage charge must be avoided where it serves no reasonable purpose in the public interest. And the whole question, to my mind, must be approached with the public interest in view, notwithstanding the subject matter is of a private nature.

At this point it might be helpful to consider the number of private cars in use in Canada.

The Canadian General Transit Company, Limited, a company organized for the business of leasing tank cars to shippers of liquid commodities, in a written submission stated that there are approximately 5,000 tank cars in Canada. It considered that some 4,000 of these are in the petroleum trade, about 3,000 of which are owned by the various oil companies. This company owns approximately 1,250 tank cars, and it leases from other owners in the United States, and then subleases to shippers in Canada about 550 additional ones. So that it has on lease in Canada approximately 1,800 cars carrying liquid commodities of all kinds. These cars are leased under various terms and conditions ranging from terms of daily or trip leases up to five year periods.

It is a definite principle that cars of a public carrier are not to be used for storage purposes. Reasonable free time is allowed before demurrage charges accrue. It is in the public interest that cars must be maintained to their highest capacity for the one purpose for which they are intended—transportation. While it is true the railways do not furnish tank cars, yet in lieu thereof and as an adjustment of their possible obligation so to do, they pay to the private car owners 1½¢ per mile loaded or empty for every mile they haul a private car. In a sense this tends to restrict the isolation of a private car from carrier-owned cars and brings them closer to the same level of purpose of service and into the same ambit of regulation. It has been seen that those owning the bulk of the tank cars, namely, the petroleum industry, and others, favour a qualified tightening of the present Rule as it is interpreted. It has also been demonstrated that there is a tendency in some instances to utilize a private tank car as a means of storage free of demurrage charges, particularly when

placed on a private siding. This, of course, would be impossible should the same car be placed for unloading on a carrier's tracks (unless the carrier leases a portion of its tracks)—thus there is potential discriminatory treatment here.

The present practice throws back upon the shipper, owner or lessee the onus of decision as to whether or not he will favour one consignee as against another. To my mind, the obligation to prevent discriminatory treatment rests upon the carriers and this Board. Consequently, in my opinion, it should be made clear by this Board that the leasing of private cars or private tracks, or the leasing of carriers' tracks for the purpose of relief from demurrage charges, should be discontinued. I would qualify this, however, where on application to the Board by a shipper it can be definitely shown that a demurrage charge under exceptional circumstances would not be in the public interest or in the interest of commerce generally.

In other words, I think the intent of the Rule as it now stands and is now phrased should be observed without qualification unless, under exceptional circumstances and on leave of the Board, relaxation is allowed. And it will naturally be the duty of the Board to see that any relaxation authorized would in no sense be unjustly discriminatory.

I think, however, it could be understood that the private cars referred to in Exception (a) of Rule No. 1 would embrace cars under lease to a shipper by a company such as the Canadian General Transit Company, Limited, or cars leased from another car owner for the purpose of transporting a shipper's goods. The whole point is that the leasing of cars or tracks for the purpose of avoiding payment of demurrage should be discontinued.

Accordingly, it is unnecessary to deal with the original application as such leases would be prohibited and, consequently, no ruling as requested need be made.

HUGH WARDROPE.

January 3, 1945.

I concur:

J. A. CROSS.

J. A. STONEMAN.

G. A. STONE.

MACPHERSON, *Commissioner*:

JUDGMENT (*Dissenting*)

I am unable to agree with the disposition of the matter as arrived at by the Assistant Chief Commissioner.

I do not think there is any material evidence to show that the acceptance by the Bureau of a written lease of a car or of a private track as the equivalent of ownership was an unreasonable interpretation of Exception (a) to Rule No. 1 of the Canadian Car Demurrage Rules.

The carriers have no vested interest in private tank cars. Consequently, it should be left entirely to the owner thereof as to whether or not he will lease his car to a consignee or arrange a lease of a portion of a consignee's siding, as has been done previously in some cases.

I think, however, that for the Bureau to accept a verbal lease might lead to confusion and misunderstanding in many instances, and so I would allow the practice to remain as it has been in the past, and insist upon a written lease either filed with the Bureau or presented for its inspection.

FRANK M. MACPHERSON.

January 31, 1945.

Application of the Municipality of Loretteville, Province of Quebec, for an Order directing the Canadian National Railways to construct a suitable station and freight shed at Loretteville, P.Q.

File No. 43874

JUDGMENT

STONE, COMMISSIONER:

Following an exchange of correspondence with the Applicant and the Canadian National Railways, this case was heard at Quebec City, Province of Quebec, on Tuesday, the 7th day of November, 1944. Mr. W. LaCroix, M.P., and Mr. Dunn Lantier appeared for the Applicant, and Mr. C. V. Darveau, K.C., appeared for the Canadian National Railways.

The Applicant contended that the present station building at Loretteville, P.Q., was old, unsanitary, poorly heated, and unsuited to adequately take care of the express and passenger traffic now offering, that the recent increase in the use of the station by passengers was caused principally by the number of war workers from Loretteville and the surrounding country who travel by train to and from their employment at the Dominion Arsenal, Valcartier, P.Q.

Counsel for the Canadian National Railways, hereinafter referred to as the Railway, submitted evidence in connection with repair work undertaken to the station building, which, when completed, will fill the requirements requested by the Applicant.

Subsequent to the hearing the Railway was requested to file a plan with the Board showing details of the changes and repairs undertaken, and additional improvements as contemplated for this station.

Recently Plan No. 432 as revised to date, was submitted to the Board, showing proposed extension of thirty feet on the end of the present building to be used as a freight shed, a general rearrangement of the present interior to provide a men's waiting room, office, ladies' waiting room, separate baggage and express room, together with additional heating facilities and separate toilets. These plans have been recommended for approval by the Board's Operating Department.

Considering the station building was recently re-roofed, and that the improvements, as outlined on Plan No. 432 revised to date, appear to reasonably meet public requirements, I am of the opinion that revised Plan No. 432 now on file with the Board should be approved, and Order issue authorizing the work, estimated to cost \$6,430.00, be proceeded with as soon as weather conditions permit.

G. A. STONE.

February 1, 1945.

I concur,

J. A. CROSS,
HUGH WARDROPE.

Requête de la municipalité de Loretteville, P.Q. demandant qu'il soit ordonné au chemin de fer Canadien-National de construire une gare et un hangar de marchandises convenables à Loretteville, P.Q.

Dossier n° 43874

JUGEMENT

STONE, COMMISSAIRE:

A la suite d'un échange de correspondance avec la requérante et le chemin de fer Canadien-National, cette affaire fut entendue en la cité de Québec, P.Q., mardi, le 7 novembre 1944. Messieurs W. LaCroix, M.P., et Dunn Lantier comparurent pour la requérante et Monsieur C.-V. Darveau, C.R., comparut pour le chemin de fer Canadien-National.

La requérante prétendit que la gare actuelle à Loretteville était vieille, malsaine, mal chauffée et impropre à prendre efficacement soin du trafic actuel des voyageurs et des messageries, que la récente augmentation dans l'usage de la gare par les voyageurs était principalement attribuable aux nombreux ouvriers de guerre de Loretteville et du district avoisinant qui voyagent par train pour se rendre à leur emploi à l'arsenal du gouvernement fédéral, à Valcartier, P.Q.

L'avocat du chemin de fer Canadien-National, ci-après appelé le chemin de fer, soumit une preuve en rapport avec les travaux de réparations exécutés à la gare, lesquels lorsque terminés, répondront aux demandes faites par la requérante.

A la suite de l'audience, le chemin de fer fut requis de produire un plan à la Commission indiquant en détail les changements et les réparations que l'on exécute ainsi que les améliorations additionnelles proposées pour cette gare.

Le plan n° 432 révisé à date a été récemment soumis à la Commission, lequel indique le prolongement projeté de 30 pieds au bout de la bâtisse actuelle pour être utilisé comme hangar de marchandises une nouvelle disposition générale de l'intérieur actuel pour pourvoir à une salle d'attente pour hommes, à un bureau, à une salle d'attente pour dames et à un espace séparé pour les bagages et les messageries, de même que des facilités de chauffage additionnelles et des toilettes séparées. Le département d'exploitation de la Commission a recommandé que ce plan soit approuvé.

Vu que la gare a été récemment recouverte d'un nouveau toit et que les améliorations, telles qu'indiquées sur le plan 432 révisé à date, paraissent répondre raisonnablement aux exigences du public, je suis d'avis que ledit plan révisé n° 432 versé au dossier de la Commission devrait être approuvé et qu'une ordonnance soit émise autorisant lesdits travaux évalués au coût de \$6,430, lesquels devront être effectués aussitôt que les conditions de la température le permettront.

G. A. STONE.

1er février 1945.

J'agrée,

J.-A. CROSS.

HUGH WARDROPE.

ORDER No. 65691

In the matter of the application of the Municipality of Loretteville, in the Province of Quebec, for an Order directing the Canadian National Railways to construct a suitable station and freight shed at Loretteville.

File No. 43874

FRIDAY, the 2nd day of February, A.D. 1945.

J. A. CROSS, K.C., *Chief Commissioner.*

HUGH WARDROPE, *Assistant Chief Commissioner.*

G. A. STONE, *Commissioner.*

Upon hearing the application at the sittings of the Board held at Quebec, in the Province of Quebec, on the 7th day of November, 1944, in the presence of Counsel for and representatives of the Municipality and the Railway Company, and what was alleged—

It is ordered: That the proposed extension to and re-arrangement of the existing station building at Loretteville, Quebec, as shown on Canadian National Railways' Plan No. 432, revised to November 29, 1944, on file with the Board under file No. 43874, be, and they are hereby, approved.

J. A. CROSS,

Chief Commissioner.

Application of the Town of Aylmer, in the Province of Quebec, under Sections 35, 178 and 179 of the Railway Act, for an Order directing the Hull Electric Railway Company to provide and replace its westbound track on Main Street, in the said Town of Aylmer.

File No. 21781.6

Mr. JOSEPH STE. MARIE appeared for the Town of Aylmer.

Mr. HAMNETT P. HILL appeared for the Hull Electric Railway Company.

JUDGMENT

WARDROPE, ASSISTANT CHIEF COMMISSIONER:

In or about the year 1896 the Hull Electric Railway Company (hereinafter referred to as the "company"), a company incorporated under the laws of the Province of Quebec, and later, in the year 1913 declared to be a work for the general advantage of Canada, constructed and commenced operation upon as part of its railway system, double tracks on Main Street in the Town of Aylmer, Province of Quebec (hereinafter referred to as the "town").

The company operated cars on the double tracks on Main Street up until the summer of 1944. At this latter period it was found necessary to repair the ties, roadbed and paving along the right of way on Main Street. During the process of above repairs the company decided that there was no necessity for the maintenance of the double tracks on Main Street, and that it could give on a single track thereon the same service it had been giving with two tracks. Accordingly, instead of replacing two tracks on Main Street, the company

removed the northerly track and now maintains its service both east and west upon its southerly track which it replaced in its former position upon the street.

The town claims that the company in removing the northerly or westbound track without leave of the Board has violated the provisions of sections 178 and 179 of the Railway Act.

On this point I will take the liberty of adopting the reasons, *mutatis mutandis*, of my colleague Mr. Commissioner Stone in his judgment of January 2, 1945, in which he disposed of the concurrent application of the town against the company for an Order, under sections 178 and 179 of the Railway Act, directing the company to replace a spur line in the town which the company abandoned prior to the year 1933.

In my opinion the words "deviation, change or alteration," as used in these sections, refer to a relocation of the right of way and cannot apply to deviations, changes or alterations which may be made upon an existing right of way.

Consequently, I hold that what the company did was not a violation of these sections.

The application was also made under section 35. The town alleged that by agreement between the town and the company the latter was obligated to maintain double tracks on Main Street, and by virtue of such alleged agreement, applies to the Board for an Order compelling the company to replace its westbound track.

The company denied that there was any agreement obligating it to maintain double tracks on Main Street.

The town was unable to produce before the Board any agreement or contract whereby the company was specifically obligated to maintain double tracks on Main Street. In lieu thereof documents in the form of copies of resolutions, copies of agreements and copies of letters, together with oral evidence, were submitted to the Board, and the Board was requested to find that this documentary and oral evidence established the existence of an agreement or contract between the parties by the terms of which the company is obligated to maintain and operate double tracks on Main Street.

I think that the Board should not act under section 35 where there is a serious question as to the existence or meaning of the agreement alleged to have been violated.

I believe this view to be in accord with previous decisions of the Board. McLean, C., said in *Hamilton v. Grand Trunk Railway*, 21 C.R.C. 211, that the section—"cannot be successfully invoked where the breach alleged falls only inferentially within the scope of the agreement; that is to say, the breach must be of something specifically set out in the agreement."

Fullerton, C. C., said in *Canadian National Railways v. Quebec City & Quebec Railway Light & Power Co.*, 40 C.R.C. 149 at p. 155,—

"It seems to me that where the validity of an agreement is called into question before the Board, it becomes a matter for the provincial Courts, and I think this is so whether its validity depends upon a question of fact or a question of law."

See also *Duthie v. Grand Trunk Railway Co.*, 1905, 4 C.R.C. p. 304, where Killam, C.C., deals generally with the powers of the Board.

Consequently, I think this part of the application also fails.

There remains one other point brought before the Board by the applicant that may be dealt with here. It is claimed that the company by replacing its one remaining track in its original position on Main Street, i.e., closer to the southerly curb rather than in the middle of the street, has created an operating

condition hazardous to the users of the street. The evidence shows that there is a distance of some 11' 9" between the southerly track and the curb whereas on the northerly side there is a width of some 27' between the northerly track and the curb. It is claimed that if motor vehicles are parked against the southerly curb and a company's car is travelling westward, a motor vehicle travelling easterly will either have to stop to let the company's car pass or might turn out onto the wider part of the street and collide with a motor vehicle travelling westerly or in the opposite direction.

While the present location of the company's track may cause some inconvenience to the users of the street, I do not find from what was before us that such a hazardous condition has been created that this Board should use what powers it may have, if any, to compel the company to relay its track in the centre of Main Street. In any event, as the town has a sewer running along the middle of the street, such action might lead to more difficulties and inconvenience than even now are anticipated.

Under all the circumstances I have outlined above, I would dismiss the application.

This, of course, without prejudice to the right of the applicant to take proceedings in the provincial Courts in regard to the matters involved in this application.

HUGH WARDROPE.

February 5, 1945.

I concur,

J. A. CROSS,

J. A. STONEMAN.

Application of the Town of Aylmer, in the Province of Quebec, under Sections 35, 178 and 179 of the Railway Act, for an Order directing the Hull Electric Railway Company to provide and replace its westbound track on Main Street, in the said Town of Aylmer.

File No. 21781.6

JUDGMENT

STONE, COMMISSIONER, DISSENTING.

Following a perusal of the Judgment dated February 5th, 1945, rendered by the Assistant Chief Commissioner, and concurred in by the Chief Commissioner and Commissioner Stoneman, on the application of the Town of Aylmer under Sections 35, 178 and 179 of the Railway Act, for an Order directing the Hull Electric Railway Company to provide and replace its westbound track on Main Street in the Town of Aylmer, I find myself at variance to the opinion of my colleagues on the question of fact. This divergence of opinion pertains to potential traffic hazards now arbitrarily created by action of the Hull Electric Railway (hereinafter referred to as the Railway), using its eastbound track for operation of its cars in both directions, thereby causing its westbound cars to move against the current of highway traffic.

The application was heard by the Board at Ottawa on November 28th, 1944, before Counsel for the Applicant and the Railway. Under examination, Mr. Lloyd Pilgrim, Mayor of the Town of Aylmer, emphasized the hazards to parked cars and eastbound auto traffic, through possibility of collision, endangering the lives of passengers and pedestrians. The position of the Applicant is very clearly set out in Exhibit No. 1 filed, including additional difficulties in clearing Main Street of snow during the winter months.

Counsel for the Railway contended that the Railway was within its legal rights in removing the westbound track, and I have no dispute with my colleagues regarding what has been stated in the majority Judgment on those phases of the law referred to therein. However, I would refer to the requirements of the Motor Vehicles Act of the Province of Quebec, R.S. 1925, C. 35, S.L., particularly to Section 36, Sub. 1, 2 and 3, which read as follows:

"36. 1. Every person, driving a vehicle or an animal on the public highway, must, whenever possible, keep to the side of the road at his right, and leave at his left as wide a passage as possible and at least one-half of the road when meeting another vehicle or a herd of cattle, or at least eight feet when meeting a pedestrian, a cycle or a stray animal.

2. Every person driving a vehicle shall bear to the right to meet another vehicle or allow such vehicle to pass the one he is driving, and shall bear to the left when passing another vehicle.

3. Every person driving a vehicle shall bear to the right when approached by any vehicle or any animal driven or led, and also to permit the passing of any person driving a motor vehicle, for which vehicle the speed allowed by law is greater than that allowed by law for the motor vehicle which he is driving."

The Board's files do not show that any submissions have been received from the Provincial Department of Highways, or that they have been consulted on the recent action of the Railway in removing its westbound track from Main Street in the Town of Aylmer, although the Province of Quebec contributes to the maintenance of that street, it being a part of its Provincial Highway System No. 8 between Montreal, Hull, Fort Coulonge and Chichester, much of which has been paved during the last two years west of Aylmer, and over which there is substantial highway traffic, particularly during the summer months.

No plans have been filed showing the distances from the railway track on Main Street to the curbs, or the actual location of the sewer and water mains. Exhibit No. 7, filed by the Applicant, is a rough sketch showing distance from the south side of the railway track to curb to be 10' 9". This does not conform with the statement of His Worship the Mayor who stated the space is 11' 9", which would appear to be the actual distance as the width of Main Street between the curbs is recorded as 43' 9".

The request of the Applicant can be summarized in its conclusions as stated on Exhibit No. 1.

"CONCLUSION:

If it was decided that a single track was sufficient (or adequate) to handle the present tramcar traffic in our town then by all means this track should be situated in the centre of the street, and this regardless of the fact that part of our sewer runs down the centre of the street. The mere fact that our sewer has never been affected with the heavy vibrations caused by springing of ties and rails while electric locomotives hauling freight cars of coal, stone, electric light poles, railroad ties, etc., has passed for nine years over these tracks on our Main St. is proof that

this arrangement could be made. There would be much less traffic delays with double tracks as well as avoiding the hazards mentioned in paragraph 1, but if the Town of Aylmer is forced to accept conditions as they now exist we would much prefer that the east bound track be also abandoned and leave our Main Street free of car tracks."

In view of the potential hazards, as stated by the Applicant, and the requirements of the Province of Quebec respecting the Motor Vehicles Act, R.S.Q. 1925, Chap. 35, I am of the opinion, in the interest of safety to the travelling public, that the Applicant's submission is cognizable enough to warrant a specific decision on this application.

The Railway Act does not authorize officials of Canadian Railways under the jurisdiction of the Board, to inaugurate unsafe operating conditions as an economy measure, and I would, under the circumstances as cited herein, direct the Railway to remedy the situation by restoration of its westbound track, or moving its present track to the centre of Main Street, so that highway traffic can, in future, function as defined in the Motor Traffic Act of the Province of Quebec, the work to be undertaken and completed as soon as weather conditions permit.

February 12, 1945.

G. A. STONE.

ORDER No. 63730

In the matter of the application of the Town of Aylmer, in the Province of Quebec, under Sections 35, 178 and 179 of the Railway Act, for an Order directing the Hull Electric Company to provide and replace its westbound track on Main Street, in the said Town of Aylmer.

File 21781.6

WEDNESDAY, the 14th day of February, A.D. 1945.

J. A. CROSS, K.C., *Chief Commissioner.*

HUGH WARDROPE, *Asst. Chief Commissioner.*

J. A. STONEMAN, *Commissioner.*

Upon hearing the application at the sittings of the Board held at Ottawa on the 28th day of November, 1944, in the presence of Counsel for the Town of Aylmer and the Railway Company, and what was alleged—

It is ordered: That the application be, and it is hereby, dismissed.

J. A. CROSS,
Chief Commissioner.

Application of the Ontario Mining Association, Toronto, Ont., for an order directing the railway companies subject to the Board's jurisdiction to amend their tariffs so that carload rates on high explosives from Nobel, Ont., Beloeil, Que., and Brainerd, Man., shall not exceed the current published through second class rates.

File 33502.1

Mr. W. F. PARKINSON and Mr. A. HARRIS appeared for the Applicant;
Mr. A. K. DYSART for the Canadian National Railways;
Mr. K. D. M. SPENCE for the Canadian Pacific Railway Company; and
Mr. W. M. MATTHEWS for the Canadian Freight Association.

JUDGMENT

CROSS, *Chief Commissioner*:

Following written submissions by the Applicant and answer by the railways, this matter was set down for hearing and was heard in the City of Toronto, Ont., January 16 and 17, 1945.

The Ontario Mining Association is an association of some forty mining companies including practically all metal mining companies in Ontario, and it is stated they purchase approximately 12,500 tons of dynamite per year for their properties located in Northern and Northwestern Ontario on the Algoma Central and Hudson Bay Railway, Canadian National Railways, Canadian Pacific Railway, and the Temiskaming and Northern Ontario Railway. This dynamite moves mainly from Beloeil, Que., on the Canadian National Railways, and Nobel, Ont., on the Canadian Pacific Railway.

While the application read "high explosives" it, in reality, covers dynamite, carloads. From brief submitted by Applicant at the hearing the nature of the application is set out as follows:—

"We are requesting the Board to issue an order directing the railways, subject to its jurisdiction, to establish as through rates for movement over two lines, the regularly published through class rates held by the Board as properly applicable on dynamite, carloads.

It is requested that the Board now establish 2nd class rates as properly applicable on carload shipments of dynamite. We believe this to be a "reasonable" toll in view of the altered conditions as stated herein, but if the Board should feel that some rating other than 2nd class is more properly applicable, the publication of such rating be authorized."

The application, therefore, is first for a reduction in carload rates on dynamite and, second, that whatever rates are considered properly applicable should apply for joint movement over two, or more, railways where there are through class rates published instead of, as at present, the combination of the rates to and from the point of interchange of such traffic.

CARLOAD RATES ON DYNAMITE

The matter of carload rates on dynamite was before the Board for consideration in 1924-25 and a reduction in the rates was then directed to the basis of the current published first class rates by General Order No. 425, dated November 13, 1925, for the reasons set out in Judgment of the Board, dated November 3, 1925 (Application of the Canadian Explosives Limited, Montreal,

Que., for a reduction in rates on high explosives in Canada, Vol. XV, Board's J.O.R. and R., p. 307). Said Judgment sets out data showing that over a period of a considerable number of years there had been a distinct improvement in the minimizing of the risk factor which should be given weight in connection with the question of rates and the Board's Order prescribed the rates which were under such circumstances considered reasonable.

Applicant alleges that the risk in transportation has been reduced since 1925 to an extent that a further substantial reduction in rates is now warranted. It submitted a letter, dated March 15, 1944, from Mr. F. E. Leach, Chief Inspector of Explosives, Explosives Division of the Bureau of Mines, Department of Mines and Resources, Ottawa, in which the opinion was expressed that there was increased safety in transportation because of better materials and improvement in manufacturing methods although, he states, "Despite the improvement in product, and use, it is still essential that every care be taken in manufacturing, handling and use of explosives." Applicant stated the risk in transportation is closely related to the sensitivity of the dynamite transported; that straight nitroglycerine dynamite is more sensitive to shock than are the other types. In the Board's Judgment of 1925 it is pointed out that the proportion of straight nitroglycerine dynamite produced and shipped was reduced from 92 per cent in 1911 to 16 per cent in 1923. Applicant submitted a letter from Canadian Industries Limited, the only company producing dynamite in Canada, stating that since 1925 straight nitroglycerine dynamite has been reduced from 16 per cent to 3 per cent of their output of dynamite. On this point Counsel for the Canadian National Railways stated that this 13 per cent difference, based on 1943 tonnage of dynamite shipped by rail, meant 3,640 tons or approximately 182 carloads of so-called Polar Dynamite which is somewhat less sensitive to shock than straight nitroglycerine dynamite, which is less than half a car per day; that upon this small difference Applicant is applying for rate reductions which would result in a loss of revenue to the rail carriers of some \$51,000 per year on the shipments from Nobel and Beloeil based on 1943 tonnage (Exhibits 3 and 14).

The transportation of explosives and other dangerous articles by freight is governed by very complete regulations prescribed and approved by this Board. They set out in detail the precautions that must be observed by shippers and rail carriers in order to minimize the danger to life and property incident to the transportation of these commodities. Witnesses called by the railways, namely, Mr. R. C. Johnston, General Superintendent, Ontario District, Canadian National Railways; Mr. J. E. G. O'Brien, Assistant General Superintendent of Transportation, Canadian Pacific Railway, and Mr. A. H. McMullen, Inspector of the Bureau of Explosives, reviewed some of these regulations and described with respect to the transportation of dynamite the selection of cars, their preparation and inspection; the preparation and packing by shippers, the loading and staying in cars, the certificates required with regard to inspection and loading of cars, the placarding of cars and maintaining a daily record of same, the advice required to be given to engine and train crew, the guarding of cars during loading and while held in terminals, and the isolation of cars of dynamite from other freight when held in terminals. It was asserted that there had been no relaxation since 1925 of the governing regulations or the observance of them. Mr. McMullen stated that his Bureau regards dynamite as one of the most dangerous commodities a railway is called upon to handle in the high explosives class and that there can be just as great damage done by the explosion of polar or gelatine dynamite as from the explosion of nitroglycerine dynamite. Exhibit 18, filed by the Canadian Freight Association, contained certain information concerning accidents and loss of life and property in connection with transportation and handling of dynamite where such accidents have taken place off

or outside of railway property. It is clear that dynamite in any form is an explosive of terrific force, capable of effecting frightful damage.

In this application, as well as in the application before the Board in 1924, some data were given concerning the transportation of gasoline, which moves at fifth class rates, and the loss incurred as a result of fires in the movement of gasoline as compared with substantially no loss in recent years in the handling of dynamite over the railways. In this connection the railways in their written answer stated:—

“In these paragraphs the applicant refers to the losses caused by accidents in transportation of Gasoline, both in the United States and in Canada during the years 1925 to 1941 inclusive. He omits to show, however, the number of cars or tons of Gasoline transported in the two countries compared with the volume of Dynamite. By the law of averages there are bound to be some accidents and the number of accidents with respect to Gasoline is not out of proportion with the number of shipments and volume of tonnage moving. For example, in the year 1940 the Interstate Commerce Commission records show that 341,281 tons of high explosives originated on United States railroads and 34,192,899 tons of Gasoline. Therefore, there were 100 times more Gasoline shipped than explosives. In normal years the ratio is from 170 to 200 times greater. In Canada, in a normal year (1938) the movement of high explosives by rail was about 35,000 tons, whereas the movement of Gasoline was approximately 1,481,000 tons, or 42 times greater than the amount of high explosives. (The proportions have of course changed since 1938 due to war conditions, but it is now against the law to specify such information.) The fact that there were until recently no explosions of high explosives for the past few years is no evidence that the inherent risk of handling this class of goods has diminished, in fact it is more by good management and good luck that serious damage has not occurred, considering the great number of shipments of explosives that are now moving over Canadian Railways. As a matter of fact, recently there was a serious explosion resulting from fire in a car of explosives on United States Lines in a Western State.”

The railways filed some exhibits which, while perhaps informative, I do not consider to be of much relevancy to the reasonableness of the rates. Exhibit 6 shows the relation of freight rate to value at point of origin of dynamite versus gasoline and covers dynamite from Beloeil and gasoline from Montreal East for corresponding distances. This showed the percentage of freight rate to the value of dynamite to average 14.1 per cent whereas in the case of gasoline the percentage of freight rate to the value averaged 31.3 per cent. Exhibit 16, covering a similar comparison with respect to dynamite from Nobel and gasoline from Parry Sound, showed the percentage of freight rate to the value of dynamite as 10 per cent and the percentage of freight rate to the value of gasoline 22.7 per cent.

Applicant also submitted figures showing that the price per 100 pounds net weight of polar dynamite has been reduced from \$15.25 in 1925 to \$11.

Applicant referred to high explosives being moved at 75 per cent of first class rates in United States territory. In their answer the railways stated:—

“The applicant refers to the fact that high explosives are moved in the United States at 75 per cent of 1st class but omits to state that these rates, as shown in the tariffs in which they are published, were made to meet truck competition, the normal basis for high explosives within the United States being 1st class. See for example Items 3560-A and 3565-A

of Supplement 17 to Trunk Line Tariff Bureau Tariff No. 90-J, I.C.C. A-797. Many decisions of the Interstate Commerce Commission can be referred to wherein that Commission has declined to prescribe anything less than 1st class. For example—

25	ICC,	19
33	ICC,	288
35	ICC,	77
39	ICC,	199
44	ICC,	531
52	ICC,	27
55	ICC,	177
55	ICC,	333
55	ICC,	350
56	ICC,	257
64	ICC,	10"

Upon giving very careful consideration to all that was submitted regarding risk in the transportation of dynamite, I do not consider that there has been shown sufficient change in conditions since 1925 to justify a further reduction in the basis of first class rates then found reasonable. I consider such basis is still reasonable for the transportation of this commodity in carloads.

THROUGH RATES ON DYNAMITE, CARLOADS, WHERE THERE ARE THROUGH CLASS RATES PUBLISHED

The rates in force on dynamite, carloads, generally speaking, have heretofore been confined to movement between stations on one carrier; in other words, for a one line haul only, so that joint movements over two, or more, lines are charged the combination of the rates to and from the point of interchange of such traffic. There are a few exceptions providing through rates for joint movement over two lines.

The matter of through rates for these joint movements was not in issue or dealt with by the Board in 1925. In the Board's Judgment of 1925 it is stated:—

"Dynamite is the commodity especially referred to. In dealing with this, there are two questions to be considered; (1) the application thereto of the ordinary factors of classification, including a comparison with the ratings of articles more or less analogous; and (2) the question of risk.

When comparison is made with other items rated as low as 4th or 5th class in carloads, it would appear that the dynamite is of equal or greater weight bulk for bulk; and as to value, approximately the same.

It would not appear that there is such a difference in classification factors as would justify the rate treatment to which exception is taken. Under these circumstances, it is the element of risk in carriage to which attention must be turned."

Applicant points out that on ordinary traffic the principle of through class rates between the railways is well established and that such through rates are on a basis which is considerably below the sum of locals, or combination of rates to and from the point of interchange. It submits that when the Board determines that a specific class rating is reasonable for application on dynamite such class rating should apply to all points where class rates are published.

If the ordinary factors of classification of dynamite (apart from risk) as compared with other items would point to a fifth class carload rating, which is approximately one-half of the first class rate, then it becomes apparent that with respect to the first class rate on dynamite the charge is one-half for the ordinary transportation service and one-half for the risk in handling and the additional expense involved upon the railway in complying with the precautions that must be observed in the transportation of this highly dangerous commodity, as already earlier referred to herein.

Under these circumstances, I can see no justification or reasonableness in charging in excess of the first class basis on dynamite in carloads where through class rates are published.

There is already some precedent for the establishment of through rates. Through first class rates on high explosives, carloads, apply between stations in Eastern Canada and points in Western Canada. They apply between points on the Canadian Pacific and Canadian National Railways in Western Canada and stations on the Northern Alberta Railways. They apply on Blasting Caps; Detonators; Fulminates; Fuses, Detonating, except safety fuses; and Projectiles, containing explosives, from stations on the Canadian Pacific and Canadian National Railways in Eastern Canada to various connecting lines, although I am of the opinion that the volume of carload traffic in these commodities is very small. The Interstate Commerce Commission have in numerous instances directed the establishment of joint through first class rates on high explosives, carloads.

A considerable volume of this dynamite is shipped from points on the Canadian Pacific and Canadian National Railways to points on the Temiskaming and Northern Ontario Railway. The Board cannot, for lack of jurisdiction, direct joint rates between these companies or to points on that portion of the T. and N. O. Railway formerly named the Nipissing Central where the traffic is routed over the T. and N. O. Railway. In this connection reference may be made to the Board's Judgment, dated September 18, 1939, in the matter of the application of the Normetal Railway Company and the Normetal Mining Corporation, Limited, *re* rates between Normetal, Que., and Canadian National Railways stations (50 C.R.T.C. 203); and the Board's Judgment of November 1, 1940, in the matter of the application of the Normetal Railway Company and the Normetal Mining Corporation, Limited, for an Order fixing joint rates with the Canadian National Railways (52 C.R.T.C. 92).

Carrying out the view I have expressed, I would direct that the railway companies subject to the Board's jurisdiction amend their tariffs, where not already provided for, publishing through first class rates on dynamite in carloads where through class rates are now published; provided that this does not require such publication over lines, or portion of lines, of railway over which high explosives are not at present carried.

J. A. CROSS.

February 12, 1945.

I concur:

HUGH WARDROPE.

FRANK M. MACPHERSON.

ORDER No. 65727

In the matter of the application of the Ontario Mining Association, of Toronto, Ontario, for an Order directing the railway companies subject to the jurisdiction of the Board to amend their tariffs so that the carload rates on dynamite shall not exceed the current published through second class rates.

File No. 33502.1

TUESDAY, the 13th day of February, A.D. 1945.

J. A. CROSS, K.C., *Chief Commissioner.*

HUGH WARDROPE, *Assistant Chief Commissioner.*

F. M. MACPHERSON, *Commissioner.*

Upon hearing the application at the sittings of the Board held at Toronto, Ontario, on January 16 and 17, 1945, in the presence of Counsel for and representatives of the Applicant, the Canadian National Railways, the Canadian Pacific Railway Company, and the Canadian Freight Association, and what was alleged—

It is ordered:

1. That the application for reduction in the carload rates on dynamite to second class rates be, and it is hereby, dismissed.

2. That, within thirty days from the date of this Order, the railway companies subject to the Board's jurisdiction amend their tariffs, where not already provided for, by publishing through first class rates on dynamite in carloads, subject to the present carload minimum weight, where there is direct connection between such railways and through class rates are now published: PROVIDED that this does not require such publication over lines, or portion of lines, of railway over which high explosives are not at present carried.

J. A. CROSS,
Chief Commissioner.

ORDER No. 65695

In the matter of the application of the Canadian Pacific Railway Company for a licence under Section 10 of The Transport Act, 1938.

File No. 42076.24

SATURDAY, the 3rd day of February, A.D. 1945.

J. A. CROSS, K.C., *Chief Commissioner.*

HUGH WARDROPE, *Assistant Chief Commissioner.*

J. A. STONEMAN, *Commissioner.*

G. A. STONE, *Commissioner.*

F. M. MACPHERSON, *Commissioner.*

Upon the report and recommendation of the Assistant Director, Traffic Department of the Board—

It is ordered: That Licence Number C.T.C. (W.T.) 117 be issued to the Canadian Pacific Railway Company for the period of one year commencing on the 15th day of January, 1945, licensing the following ships, namely:—

Vessel Name	Official Registry No.	Gross Tonnage
<i>Assiniboia</i>	125984	3,880
<i>Keewatin</i>	125985	3,856
<i>Manitoba</i>	94879	2,616

to transport passengers and/or goods by water between all ports or places in Canada on Lake Huron (including Georgian Bay) and Superior, and their connecting waters.

HUGH WARDROPE,
Assistant Chief Commissioner.

ORDER No. 65676

In the matter of Agreed Charge between the Canadian National Railways, Canadian Pacific Railway Company, Northern Alberta Railways Company and certain shippers covering transportation of lumber and forest products between stations in Western Canada specified therein, approved by Order No. 59787, dated October 18, 1940.

File No. 40994.13

TUESDAY, the 6th day of February, A.D. 1945.

HUGH WARDROPE, *Assistant Chief Commissioner.*

G. A. STONE, *Commissioner.*

F. M. MACPHERSON, *Commissioner.*

Whereas the Fort St. John Lumber Co., Ltd., of Fort St. John, British Columbia, has made application under subsection (6) of Section 35 of The Transport Act, 1938, and represented to the Board that its business will be unjustly discriminated against unless a similar charge be fixed for the transport of its lumber and forest products, and has expressed its willingness to meet and comply with the provisions and conditions of the said Agreed Charge—

It is ordered: That the agreed charges approved by the said Order No. 59787, dated October 18, 1940, be, and they are hereby, fixed for the transport by the said railways of lumber and forest products, as described in paragraph B of the said Agreed Charge, for the Fort St. John Lumber Co., Ltd., from Dawson Creek, British Columbia, to the stations referred to in paragraph C (2) of the said Agreed Charge, subject to and upon the terms and conditions contained in the said Agreed Charge; and the Board hereby appoints the date of this Order as the date on which the said charges fixed as aforesaid are to come into operation.

HUGH WARDROPE,
Assistant Chief Commissioner.

ORDER No. 65709

In the matter of Agreed Charge between the Canadian National Railways, Canadian Pacific Railway Company, Northern Alberta Railways Company and certain shippers covering transportation of lumber and forest products between stations in Western Canada specified therein, approved by Order No. 59787, dated October 18, 1940.

File No. 40994.13

FRIDAY, the 9th day of February, A.D. 1945.

J. A. CROSS, K.C., *Chief Commissioner.*HUGH WARDROPE, *Assistant Chief Commissioner.*G. A. STONE, *Commissioner.*F. M. MACPHERSON, *Commissioner.*

Whereas Johnsson Bros. & Ostberg, of Love, Saskatchewan, have made application under subsection (6) of Section 35 of The Transport Act, 1938, and represented to the Board that their business will be unjustly discriminated against unless a similar charge be fixed for the transport of their lumber and forest products, and have expressed their willingness to meet and comply with the provisions and conditions of the said Agreed Charge—

It is ordered: That the agreed charges approved by the said Order No. 59787, dated October 18, 1940, be, and they are hereby, fixed for the transport by the said railways of lumber and forest products, as described in paragraph B of the said Agreed Charge, for Johnsson Bros. & Ostberg from Love, Saskatchewan, to the stations referred to in paragraph C (2) of the said Agreed Charge, subject to and upon the terms and conditions contained in the said Agreed Charge; and the Board hereby appoints the date of this Order as the date on which the said charges fixed as aforesaid are to come into operation.

J. A. CROSS,
Chief Commissioner.

ORDER No. 65728

In the matter of the application of The Niagara, St. Catharines & Toronto Railway Company, hereinafter called the "Applicant," for a licence under Section 10 of The Transport Act, 1938:

File No. 42076.10

MONDAY, the 12th day of February, A.D. 1945.

J. A. CROSS, K.C., *Chief Commissioner.*HUGH WARDROPE, *Asst. Chief Commissioner.*J. A. STONEMAN, *Commissioner.*G. A. STONE, *Commissioner.*F. M. MACPHERSON, *Commissioner.*

Upon the report and recommendation of the Assistant Director of the Traffic Department of the Board—

It is ordered: That Licence Number C.T.C. (W.T.) 118 be issued to the Applicant for the period of one year commencing on the 15th day of January, 1945, licensing the following ships:

<i>Vessel Name</i>	<i>Official Registry No.</i>	<i>Gross Tonnage</i>
<i>Dalhousie City</i>	130312	1,256
<i>Northumberland</i>	96937	1,255

to transport passengers and/or goods by water between all ports or places in Canada on Lake Ontario.

J. A. CROSS,
Chief Commissioner.

GENERAL ORDER No. 669

In the matter of Rules and Regulations Governing the Construction and Filing of freight schedules with the Board by railway companies and water carriers:

File No. 606

THURSDAY, the 21st day of December, A.D. 1944.

J. A. CROSS, K.C., *Chief Commissioner.*
 HUGH WARDROPE, *Assistant Chief Commissioner.*
 J. A. STONEMAN, *Commissioner.*
 G. A. STONE, *Commissioner.*
 F. M. MACPHERSON, *Commissioner.*

In pursuance of the powers expressly conferred by Sections 34 and 324 of the Railway Act, and under Part IV of The Transport Act, 1938, and of all other powers possessed by the Board in this behalf—

It is ordered:

1. That the regulations entitled, "Tariff Circular No. 1—Regulations Governing the Construction and Filing of Freight Tariffs by Railway Companies and Water Carriers," attached hereto, be, and they are hereby, prescribed for the use of railway companies, water carriers, and properly authorized agents thereof, who file freight schedules with the Board.

2. That Circular 223, as approved by General Order No. 479 dated June 28, 1929, in so far as it is applicable to freight schedules; and General Orders No. 583 dated February 24, 1939, Nos. 617 and 618 dated March 13, 1942, and No. 648 dated August 12, 1943, be, and they are hereby, rescinded.

3. That this Order shall come into force on the first day of May, 1945.

J. A. CROSS,
Chief Commissioner.

TARIFF CIRCULAR

No. 1

REGULATIONS

**Governing the Construction and
Filing of Freight Tariffs by Railway
Companies and Water Carriers**

**PRESCRIBED BY GENERAL ORDER No. 669
DATED DECEMBER 21, 1944, OF THE BOARD**

EFFECTIVE MAY 1, 1945

Cancels:

**Freight Rules in Circular No. 223, as amended
and
Regulations in General Orders 583 and 618**



**OTTAWA
EDMOND CLOUTIER
PRINTER TO THE KING'S MOST EXCELLENT MAJESTY
1945**

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BOARD OF TRANSPORT COMMISSIONERS FOR CANADA

TARIFF CIRCULAR No. 1

Effective May 1, 1945

*Cancels freight rules in Circular 223 as amended,
also Regulations in General Orders 583 and 618*

REGULATIONS GOVERNING THE CONSTRUCTION AND FILING OF FREIGHT TARIFFS BY RAILWAY COMPANIES AND WATER CARRIERS

FOREWORD

The following regulations, for the guidance of and observance by Canadian and foreign carriers, are founded upon the statutory requirements of the Railway Act and The Transport Act, 1938. In recognition of the large volume of international traffic between the United States and Canada, an attempt has been made to harmonize these regulations with similar regulations of the Interstate Commerce Commission, having due regard to the requirements of Canadian law. Occasions will arise when a precise rule will not be found to fit a peculiar circumstance; therefore, under such conditions, an application should be directed to the Board for determination and ruling.

These regulations are a complete revision of freight tariff rules for rail and water carriers and contain important changes. They must be given careful study and any schedules issued subsequent to the effective date of these regulations must comply therewith.

The arrangement of these regulations is by rule number, paragraph and sub-paragraph. When referring thereto, the reference to be quoted is, for example, "Rule 2 (1)" or "Rule 6 (5) (a)".

1. DEFINITIONS

(1) In these regulations, unless the context otherwise requires, the following terms mean:—

Class Rate.

(a) "Class Rate"—All rates subject to the Canadian Freight Classification; or United States freight classifications and "Exceptions" thereto.

Commodity Rate.

(b) "Commodity Rate"—All rates on specific commodities.

Competitive Tariff.

(c) "Competitive Tariff"—A tariff containing tolls lower than in the "Standard Tariff" and which are issued to meet competition.

Joint Rate.

(d) "Joint Rate"—A rate extending over lines of two or more carriers.

Joint Route.

(e) "Joint Route"—Routes extending over lines publishing joint rates.

Joint Tariff.

(f) "Joint Tariff"—A tariff in which joint rates are published.

Local Rate.

(g) "Local Rate"—A rate which extends over the line of one carrier only.

Local Tariff.

(h) "Local Tariff"—A tariff containing only local rates.

Schedule.

(i) "Schedule"—A tariff or a supplement or a page of a loose leaf tariff.

Special Tariff.

(j) "Special Tariff"—A tariff containing tolls lower than in the "Standard Tariff" and other than to meet competition.

Standard Tariff.

(k) "Standard Tariff"—A tariff containing maximum mileage tolls issued pursuant to subsection 1, Section 329 of the Railway Act.

Station.

(l) "Station"—When applied to a water carrier means point or port served by the carrier.

Tariff.

(m) "Tariff"—Any publication containing tolls, absorptions, rules, regulations or any complementary publications affecting the tolls to be charged by a carrier, such as: basis books, car capacities, classifications, demurrage, distance tables, station lists, special services, storage, terminal and transit arrangements, etc.

Through Rate.

(n) "Through Rate"—The total rate from origin to destination. It may be a local rate; a joint rate; or a combination of separately established rates.

Toll.

(o) "Toll"—Any toll, rate, charge or allowance made by a carrier in respect of the carriage, shipment, transportation, care, handling or delivery of goods, or in respect of any service incidental to the business of a carrier.

Traffic.

(p) "Traffic"—Property to be transported.

(2) Unless the context otherwise requires, words expressed in these regulations in the singular include the plural and vice versa.

2. BY-LAW AUTHORIZING ISSUANCE OF TARIFFS

(1) Carriers subject to the jurisdiction of the Board are required by Section 323 of the Railway Act and Section 18 of The Transport Act, 1938, to submit, for the Board's approval, a by-law or resolution authorizing any of its officers to prepare and issue tariffs of tolls to be charged. By-law to be submitted for approval.

(2) Such by-law or resolution shall be submitted in the form and under the certification as follows:—

"I (name and title of officer to be here inserted), of (name of company to be here inserted), do hereby certify that the following is a true copy of a by-law (or resolution) datedadopted by the Board of Directors of the said (insert name of company) at a meeting held at the office of the company in (name and place) on (insert date), at which a quorum was present and voted,— Form of certificate to submit by-law.

'The (here insert the title, but not the name of the officer) of the company is hereby authorized by this by-law (or resolution) to prepare and issue tariffs of the tolls to be charged by the company, and to submit the same to, and file the same with, the Board of Transport Commissioners for Canada as required by the Railway Act or The Transport Act, 1938.' Form of by-law or resolution.

In witness whereof, I hereunto fix my hand and seal of the company this.....day of....., 19..

.....
Name

.....
Title"

(Seal)

(3) Both freight and passenger tariffs may be included in the same by-law or resolution. Freight and passenger tariffs in same by-law.

3. FILING

(1) Subject to the undernoted exceptions, only one copy of each schedule need be filed with the Board. Number of copies to be filed.

Exceptions

(a) Official Distance Table and amendments thereto. (Rule 21 (1))	}	File two copies
(b) Tariff Index and amendments thereto. (Rule 25 (1))		

(2) Unless otherwise specifically authorized by the Board and subject to the undernoted exceptions, schedules must be filed to be effective on not less than thirty (30) days' notice for increases, and three (3) days' for reductions or other changes. Period of notice to be given.

Exceptions

(a) Competitive rates, in certain cases as provided in Rule 17 (1) and 17 (2).	}	Without notice
(b) Station changes in Official List of Freight Stations as provided in Rule 24 (3).		
(c) Rates account newly constructed rail lines or newly licensed water services.		
(d) Supplements to rail carriers' tariffs announcing discontinuance of water service. (Rule 9 (1) (e))	}	One day's notice
(e) Supplements to water carriers' tariffs announcing discontinuance of service. (Rule 9 (2) (c))		
(f) Supplements to or reissues of tariff referred to in sub-paragraph (h) hereof. (Rule 9 (2) (h))		
(g) Supplements vacating an order of suspension or cancelling suspended matter. (Rule 14 (2) and (3))		
(h) Tariff fixing dates of acceptance of shipments by water carriers. (Rule 9 (2) (h))	}	Fifteen days' notice

Commencement of notice period.

The act of mailing does not constitute filing. The period of notice commences from the date of receipt of the schedule by the Board.

Filing Advice.

(3) Schedules to be filed must be accompanied by a filing advice in duplicate (see Appendix A). Such filing advices shall be consecutively numbered and contain a description of the schedules to be filed therewith. The original advice will be retained; the duplicate will be stamped with date of receipt and returned to the sender to verify the receipt of the schedules by the Board. Such receipt should be verified by the sender to assure that the schedule is on file.

Filing address.

(4) Schedules and filing advices shall be addressed, "Director, Traffic Department, Board of Transport Commissioners for Canada, Ottawa, Canada." Postage or other charges shall be prepaid by the sender, except that, if mailed in Canada and the envelope is plainly marked "O.H.M.S.", no postage is required.

CTC numbers to be consecutive.

(5) Tariffs are to be filed in consecutive order. If, for any reason, this is not done, the tariff which is filed with a CTC number that is not consecutive with the last one filed shall be accompanied by an explanation of the omission in filing.

Telegraphic advice of changes in tariffs in emergency cases.

(6) Carriers and agents having filing offices in Canada at Winnipeg or west thereof are authorized in cases of emergency only to notify Director, Traffic Department, of the Board by telegraph of a proposed change in rates, provided that:—

(a) The new schedule be immediately published and publicly posted for the full period of notice as required by paragraph (2) of this rule.

(b) The telegram to the Board plainly state the changes proposed to be made and the effective date thereof.

(c) The new schedule be mailed to the Board not later than the date of the publication.

(d) A copy of the telegram be attached to the schedule filed with the Board.

4. REJECTION

- (1) Schedules which fail to meet the requirements of these rules may be rejected and returned to the sender. Board may reject schedules.
- (2) The CTC number or supplement number of a rejected schedule shall not again be used. Rejected schedules void.
- (3) Schedules issued in substitution of those rejected shall show on the title page "Issued in lieu of (*insert reference to rejected schedule*) rejected by the Board of Transport Commissioners for Canada". Substitution of rejected schedules.
- (4) Where schedules filed with both the Interstate Commerce Commission and this Board are rejected by the Interstate Commerce Commission, the issuing carrier or agent shall immediately notify the Director, Traffic Department, of the Board, of such rejection. Such rejected schedules will also be marked rejected by this Board and returned to the person filing. Rejection by Interstate Commerce Commission.

5. DEPARTURES FROM RULES

- (1) No departure from the provisions of these rules is permitted except upon special permission of the Board. Departures only by special permission.
- (2) If it is desired to depart from the provisions of these regulations, an application in the form set out in Appendix B hereto (or by telegram) must be made to the Director, Traffic Department, of the Board, setting out the specific rule concerned and describing fully the relief desired. In urgent cases, an application may be made verbally, but must be supported by immediate application in writing. Application for relief.
- (3) Applications granted will be assigned a special permission number which shall be inscribed in the schedule affected as follows:— Special permission number to be shown in schedule.
- "Departure from the terms of Rule of Tariff Circular No. 1 is authorized by Special Permission No. dated of the Board of Transport Commissioners for Canada."
- (4) Special permissions may be used once only unless it is specifically provided otherwise therein. Special permissions not continuous.

6. CONSTRUCTION OF SCHEDULES

- (1) *Form and size:*—
Schedules must be in book, pamphlet or loose-leaf form, of uniform size, eight inches wide by eleven inches long. Form and size.
- (2) *Paper and print:*—
Schedules must be prepared on paper of good and lasting quality. Carbon copies or indistinct matter will not be accepted for filing. Clear copies.
- (3) *Alterations or erasures:*—
Alterations in the original text, or erasures, are not permitted in schedules filed with the Board or in those posted for public inspection. No alterations or erasures.

(4) *Numbering*:—Consecutive
numbering.

Each issuing carrier and agent must number tariffs in consecutive CTC order in its, or his, own series. Separate series of CTC numbers must be used for freight and passenger tariffs.

(5) *Title page of tariff*:—

The title page of every tariff shall show in the order named:—

CTC
numbers
and
cancellation
reference.

(a) CTC number of tariff in bold type in a prominent position in the upper margin, and immediately thereunder, in smaller type, the CTC number of tariffs cancelled thereby. If it is impracticable to show the cancelled numbers in such manner, they may be shown within the tariff and specific reference thereto placed on the title page in lieu of the cancelled numbers.

Reason
for
issuance.

(b) Above the issuing carrier's or tariff bureau's name shall be shown the reason for issue, thus, "Increase", "Reduction", "New Rates", "No change in rates", etc.

Name of
carrier.

(c) Corporate name of issuing carrier, or name of tariff bureau when issued by an agent.

Participating
carriers.

(d) Participating carriers with power of attorney and/or concurrence number against each carrier's name. If such participating carriers are too numerous to place them conveniently on the title page, they may be shown elsewhere in the tariff and reference made on the title page as to where they may be found.

Kind of
tariff.

(e) Whether tariff is Standard; Special (local or joint); Competitive (local or joint); or Special and Competitive (local or joint). Such additional designations as Export or Import, etc., may be added thereto.

Character
of tariff.

(f) The character of the tariff, i.e., Class, Commodity, Rules and Regulations, Switching, etc., to disclose concisely the nature of the traffic or the service covered thereby.

Territory.

(g) The points or territory from and to which the tariff applies in sufficient detail to adequately disclose the scope of the tariff.

Classification
governing.

(h) Reference to the governing classification and exceptions, if any, by name and CTC number.

Issue and
effective
dates.

(i) Date of issue at left hand side and date effective on right hand side. Where more than one effective date is involved and cannot be conveniently shown on title page, the notation "except as otherwise provided herein" must appear immediately below the general effective date.

Expiration
dates.

(j) Where the tariff expires with a given date, such date of expiration shall be prominently shown with notation "Expires with (date) unless sooner cancelled, changed or extended".

Order or
special per-
mission
numbers.

(k) Reference to any order or special permission pursuant to which tariff is issued.

Name of
issuing officer.

(l) Name, title and address of issuing officer of the issuing carrier or of the agent authorized to issue by power of attorney.

(6) *Contents of tariffs:—*

Tariffs shall contain:—

(a) Table of contents: A full and complete statement in alphabetical order, of the exact location where information under general headings, by subjects, will be found, specifying page or item numbers. If a tariff contains so small a volume of matter that its title page or its interior arrangement plainly discloses its contents, the table of contents may be omitted. Table of contents.

(b) A complete alphabetical index of all articles upon which commodity rates are named therein, with reference to each item (or page) where such article is shown. Different kinds or species of the same commodity shall be grouped together, for example, all items of coal as "Coal, Anthracite", "Coal, Bituminous", etc. If all of the commodity rates are arranged in alphabetical order by commodities, no index is required. Index of commodities.

(c) Unless the tariff clearly shows the application of the rates therein, an alphabetical index of stations showing province or state in which located, from and to, or between, which rates apply. Such index shall show reference to the item, station or rate basis number necessary to ascertain the applicable rate except that, when stations are arranged alphabetically in commodity items, the index of stations may be omitted from the tariff. Where rates are shown by territorial or group descriptions, the tariff must provide a complete alphabetical list of such points, together with the name of the line on which located, or refer by CTC number to a schedule containing such list. Alphabetical index of stations.

(d) Information as to prepay requirements, station facilities and restrictions as to non-acceptance and non-delivery of freight. Such information may be omitted from the tariff if reference is given by CTC number to a separate tariff containing the same. Prepayment, station facilities, etc.

(e) Geographical list of stations from and to which rates apply, but may be omitted from the tariff if reference is given by CTC number to an official list of stations showing such information, or may be omitted from commodity tariffs when the stations are shown therein only in commodity items; or may be omitted from specific commodity tariffs when the stations are arranged alphabetically with applicable tolls shown against each station therein. Geographical list of stations.

(f) Explanation of abbreviations, notes, reference marks, symbols (see also Rule 6 (9)) and other technical terms used in the tariff. An explanation of reference marks and symbols should, if possible, be shown on the page on which they appear or reference made to the page on which the explanation is given. Explanation of abbreviations and reference marks.

(g) Appropriate and uniform reference marks to indicate competitive rates which are included in a tariff with non-competitive rates. Symbol to indicate competitive rates.

(h) Indication of changes made therein by the use of symbols as prescribed in Rule 6 (9). When schedules, or rates and charges in schedules, expire by limitation on a certain date and new schedules are filed to take effect immediately following the date of expiration of the former tariff, rate or charge, no lapse of time Symbols showing changes made in schedules.

occurs between the two publications, and the new schedule must indicate by appropriate symbol the actual change in rate or charge made from the previous publication.

Rules governing the tariff.

(i) Rules and regulations governing the tariff stated in clear and explicit terms so as to leave no room for doubt as to their application to the rates and charges named in the tariff. Where a tariff is governed in whole or in part by rules and regulations published in another schedule, reference to such other schedule by CTC number shall be shown therein. If a special rule is applicable to a particular rate, a complete explanation of such rule shall be provided on the same page with such rate or reference to where the explanation may be obtained inserted therein.

Tolls to be explicitly stated.
Exact descriptions of commodities.

(j) The rates explicitly stated, together with the names or designation of the places from and to which they apply, all arranged in a simple and systematic manner. Commodity descriptions must be explicit so as to leave no room for supposition or analogy; the terms "Grain Products", "Forest Products" or similar terms must not be used in any tariff for the purpose of indicating the articles on which the rates apply unless a full list of the articles intended to be included in, and covered by, such terms is provided in the tariff or specific reference is given by CTC number to the schedule containing such list. Complicated manner of arrangement or ambiguous terms must be avoided.

Simple arrangement of schedules.

Arbitraries or differentials.

(k) A tariff may provide rates from or to designated points by the addition or deduction of arbitraries or differentials from or to base point rates. When such arbitraries or differentials are shown in other schedules, specific reference thereto by CTC number must be shown in the tariff publishing the rates from or to the base points.

Routing.

(l) Routing (where necessary) or reference by CTC number to a Routing Guide. (See Rule 26 (4) for provisions as to routing in joint tariffs.)

Water carriers' rules re irregular service.

(m) As to water carriers, specific rules clearly setting out the conditions under which the tolls of water carriers apply to, from, or between ports not regularly served by the vessels of the carriers parties thereto.

(7) *Loose leaf tariffs:—*

Minimum number of pages.

No tariff shall be published in loose leaf form unless it contains more than twenty (20) pages. Such tariffs shall be constructed as follows:—

Printing one side only.

(a) Each page of the tariff shall be printed on one side only and shall be consecutively numbered and designated as "Original Page 1", etc.

Numbering, dating, name of issuer.

(b) Each page must show at the top the name of the issuing carrier or agent, the page number and the CTC number of the tariff. At the bottom of the page shall be shown the date of issue, the effective date, and the name, title, and address of the issuing officer or agent.

(c) The pages following the title page shall be designated "Original Page . . ." and the first page thereof shall consist of a check sheet showing the word "Original" or the subsequent revision number of all pages of the tariff as at the date of issuance of the check sheet. Revised check sheets listing added or revised pages must accompany such pages when forwarded for filing. Check Sheet.

(d) Changes in and additions to loose leaf tariffs shall be made by reprinting the page upon which the change or addition is made. Such changed page shall be designated as a revised page, such as "First Revised Page 1, cancels Original Page 1" or "Second Revised Page 1, cancels First Revised Page 1", etc. When a revised title page is issued, it shall be designated "First Revised Title Page" and the following notation shall be shown immediately below its effective date: "Original tariff effective (*show effective date of original title page*)". Change pages by reprinting.

(e) If necessary to add an additional page within the series of pages comprising the tariff, such page shall be given the same number as the page it follows and designated "Original Page 1A", etc. If necessary to add pages beyond the original page series, such additional pages shall be consecutively numbered in continuation of the present page series and be designated "Original Page . . .". Subsequent changes to additional page shall be made in the same manner as stated in sub-paragraph (d) hereof. Additional pages.

(f) When necessary to transfer tariff matter from one page to another because of expansion, the first additional page containing the expanded matter shall show the following notation: "For previous (*describe matter*) see . . . , page . . .". The revision made to the page formerly containing the transferred matter shall likewise show reference to the new page where the said tariff matter will be found. Subsequent revised pages to the foregoing shall not carry forward these notations. Transfer from one page to another.

(g) In all other respects, loose leaf tariffs shall be prepared in similar manner to bound tariffs except that no supplements shall be issued thereto other than (1) for purpose of cancelling the tariff, (2) for purpose of changing all, or substantially all, of the rates contained therein, (3) for the purpose of discontinuing or restoring water service, or (4) as may be authorized by special permission of the Board. No supplement except for specific purposes.

(h) Loose leaf tariff pages must be uniformly perforated in the left margin to permit fastening together as a complete tariff. Uniform perforations.

(8) Supplements:—

(a) Supplements to tariffs shall be issued only for purpose of adding to, changing or cancelling all or part of the provisions of the tariff they supplement. Purpose.

(b) Each supplement shall be numbered consecutively commencing with "Supplement No. 1", and where a supplement cancels previous supplements, it shall be so shown, "Supplement No. 2". Numbering, dating, name of issuer.

cancels Supplement No. 1", etc.; bear the CTC number of the tariff; the issued and effective dates; the name, title and address of the issuing officer or agent, and show clearly on the title page the numbers of all supplements which are in effect.

Supplements to
identify
changes in
tariff.

(c) Supplements must adequately identify the exact portion of the tariff to be amended by referring to the number of the page, item, station, rule, etc., and such identification must be clear and distinct.

Progressive
item
numbering.

(d) When an item number has been assigned in a tariff (except a loose leaf tariff or classification) the same number must be maintained throughout the life of the tariff and when changed in supplements the suffix "A", "B", "C", etc., progressively added thereto in subsequent changes. If the provisions of an item are cancelled, or have expired by limitation, and it is desired to later restore the same, the item must be republished under the original number with the appropriate suffix as above described.

Governed by
same rules
as tariff.

(e) In all respects supplements are to be governed by the same provisions as are applicable to the tariff they supplement or amend.

Consolidating
supplements.

(f) A supplement, which consolidates reissued matter from a former supplement, must bear the notation on the title page "Effective except as otherwise provided herein" and the reissued matter therein shown by an explanatory note "Reissued, effective (*date originally effective*) in Supplement No.". Such explanation may be noted against the item by the symbol ☐ as prescribed in Rule 6 (9).

(9) Symbols:—

Symbols
to denote
changes.

(a) Changes in rates, charges, or wording of schedules shall be uniformly indicated by the use of the following symbols, which shall be used for no other purpose:—

◆ or (A) to denote increase.

↓ or (R) to denote reduction.

▲ or (C) to denote change in wording which clearly results in neither increase nor reduction in charges.

☐ to denote reissued matter with the supplement number from which reissued inserted therein.

General
changes.

(b) When a change of the same character is made in all, or substantially all, rates in a schedule, or a page thereof, the nature of such change may be indicated in distinctive type at the top of the title page of such issue, or at the top of each page affected, in the following manner: "All rates in this issue (or page) are reductions (or increases), except as otherwise indicated". In the latter case, a bold face dot "●" shall be used to symbolize a rate in which no change is made.

Explanation of
symbols.

(c) An explanation of these symbols must be published in the schedule in which used.

7. INTERMEDIATE POINT RULE

(1) Tariffs issued between specific points in Canada containing rates which are not competitive shall contain the following clause:—

“The rates named herein, unless specifically indicated as competitive, are maximum rates and must not be exceeded in the same direction from or to any intermediate points in the direct line of transit.”

Intermediate point rule to be inserted in tariffs between points in Canada.

(2) Tariffs naming rates from points in Canada to points in the United States shall contain a rule to the effect that such rates, unless specifically indicated as competitive, must not be exceeded from intermediate points in Canada.

From Canada to United States.

(3) Tariffs naming rates from points in the United States to points in Canada shall contain a rule to the effect that such rates, unless specifically indicated as being competitive, must not be exceeded to intermediate points in Canada.

From United States to Canada.

8. ALTERNATION OF CLASS RATES WITH COMMODITY RATES

(1) Commodity tariffs applicable between points in Canada shall provide therein for the alternative application of class rates by the following rule:—

“The class rate at actual weight, subject to classification minimum weight, will apply if it makes a lower charge per shipment than the commodity rate and minimum weight published herein.”

Class rates apply if lower than commodity rates.

9. DISCONTINUANCE AND RESTORATION OF WATER SERVICES

(1) *Rail Carriers' tariffs*:—

(a) Tariffs of rail carriers, or their agents, containing joint rail and water tolls, applicable via routes upon which it is necessary to close navigation during the winter months of each year, must provide for the discontinuance and restoration of service over such routes.

Joint rail and water tariffs to provide for suspension of water service.

(b) The following notation shall appear on the title page of the tariff:—

Notation on title page.

“Transportation service in connection with (*name of water carrier*) is subject to discontinuance and restoration as indicated on page”

(c) When definite dates of discontinuance and restoration of service can be determined, the following rule shall appear in the tariff:—

“Shipments will be accepted by carriers parties to this tariff during the period from.....to..... of each year, for transportation on the vessels of (*name of*.....)

Definite dates of acceptance.

participating water carrier) subject to the condition that all freight left on hand at port of transshipment after the closing of navigation for lack of space on vessels sailing after the arrival of such freight, and all freight reaching the port of transshipment after the last sailing of each season of navigation will be forwarded via all-rail routes, if all-rail service can be given, and be subject to the tariff rates applicable via such all-rail routes in effect on date of shipment from the point of origin of the shipment."

(d) When definite dates of discontinuance and restoration can be determined and it is desired to extend the final date of discontinuance to a later date, the following rule shall appear in the tariff:—

Definite
dates of
acceptance
with extended
final date.

"Shipments will be accepted by carriers parties to this tariff during the period from.....to..... of each year, for transportation on the vessels of the (*name of participating water carrier*). Shipments will also be accepted from the latter date until....., subject to the condition that all freight left on hand at the port of transshipment after the closing of navigation for lack of space on vessels sailing after the arrival of such freight, and all freight reaching the port of transshipment after the last sailing of each season of navigation will be forwarded via all-rail routes, if all-rail service can be given, and be subject to the tariff rates applicable via such all-rail routes in effect on date of shipment from the point of origin of the shipment.

No supplement will be issued to this tariff announcing the date of discontinuance of service."

(e) When definite date of final discontinuance of service cannot be determined, the following rule shall appear in the tariff:—

Indefinite
date of
final
acceptance.

"Shipments will be accepted by carriers parties to this tariff during the period from.....to..... of each year, for transportation on the vessels of the (*name of participating water carrier*). Shipments will also be accepted from the latter date until the date announced by supplements to this tariff, subject to the condition that all freight left on hand at the port of transshipment after the closing of navigation for lack of space on vessels sailing after the arrival of such freight, and all freight reaching the port of transshipment after the last sailing of each season of navigation will be forwarded via all-rail routes, if all-rail service can be given, and be subject to the tariff rates applicable via such all-rail routes in effect on date of shipment from the point of origin of the shipment.

Supplements announcing the final date of acceptance of shipments will be issued to this tariff, will be posted at stations and filed with the Board of Transport Commissioners for Canada not less than one day in advance of such date."

Supplements.

(f) Supplements issued under the provisions of paragraph (1) (e) of this rule may be filed without regard to Rule 12.

(g) Tariffs containing joint rail and water tolls may be reissued or amended at any time in the regular manner. Tariffs containing the clause prescribed by paragraph (1) (e) of this rule, which are made effective subsequent to the date of actual discontinuance of service, must contain a statement that service was discontinued "on..... as per supplement No. to CTC No. (former tariff)".

Discontinuance
rule in
reissued
schedules.

(2) *Water Carriers' tariffs:—*

(a) Water carriers, whose services are subject to discontinuance during winter months, must provide in their tariffs, or tariffs issued by their agents, for the discontinuance and restoration of service.

Water
carriers'
tariffs must
provide for
suspension
of service.

(b) The following notation shall appear on the title page of each tariff:—

Notation on
title page.

"Transportation service is subject to discontinuance and restoration as stated on page"

(c) Subject to the provisions of Rule 9 (2) (d), (e) and (f), any one of the following rules shall be inserted in each tariff on the page designated on the title page thereof:—

Acceptance of Shipments

(1) "Shipments will be accepted by the water carriers parties to this tariff during the period from.....to..... of each year for transportation on the vessels of the water carriers participating in this tariff."

Definite
dates of
acceptance.

(2) "Shipments will be accepted by the water carriers parties to this tariff during the period from.....to..... of each year for transportation on the vessels of the water carriers participating in this tariff. Shipments will also be accepted from the latter date to.....subject to the condition that if, due to lack of space on vessels, or necessity to advance the sailing date of vessels, such freight cannot be accommodated the shipment will be refused, or if it has been accepted will be held for disposal instructions of the shipper. No supplement will be issued to this tariff announcing the date of discontinuance of service."

Definite
dates of
acceptance
with extended
final date.

(3) "Shipments will be accepted by the water carriers parties to this tariff during the period from.....to..... of each year for transportation on the vessels of the water carriers participating in this tariff. Shipments will also be accepted from the latter date until the date announced by supplements to this tariff. Supplements announcing the final date of acceptance of shipments will be issued to this tariff; will be posted in the manner required by the regulations of the Board of Transport Commissioners for Canada; and filed with the said Board not less than one day in advance of such date."

Indefinite
date of
final
acceptance.

(d) Supplements issued under the provisions of paragraph (2) (3) of this rule may be filed without regard to Rule 12.

Supplements.

(e) Tariffs containing the clauses authorized in paragraph (2) (c) of this rule may be amended or reissued at any time in the regular manner. Tariffs containing clause (3) of the aforesaid rule,

Discontinuance
rule in
reissued
schedules.

which are made effective subsequent to the date of actual discontinuance of service, must contain a statement that service was discontinued "on as per supplement No. to CTC No. (former tariff)".

Alternative suspension by separate tariff.

(f) In lieu of the provisions of sub-paragraph (c) hereof, water carriers may provide for the discontinuance and restoration of their services by filing a separate tariff, numbered in their CTC series, announcing such dates for all services and tariffs and for no other purpose.

(g) In applying the alternate provisions of sub-paragraph (f) hereof, the following rule shall appear on the title page of each tariff affected, or may be suitably inserted in the tariff and reference thereto shown on the title page:—

Acceptance of Shipments

Notation for title pages of tariffs.

"Shipments to be transported under this tariff will be accepted by carriers parties hereto only during the period of each year specified in the tariff issued for that purpose lawfully in effect and on file with the Board of Transport Commissioners for Canada."

Suspension tariff to show full information re service.

(h) The separate tariff, referred to in sub-paragraph (f) hereof, shall show clearly the period of acceptance of shipments in the same manner as prescribed in sub-paragraph (c) hereof; the services affected, by an adequate description thereof; and the CTC numbers of the tariffs concerned. The tariff announcing discontinuance and restoration may be filed on not less than fifteen (15) days' notice, but if desired to extend or terminate dates of acceptance of shipments after such tariff has been issued, supplements thereto or reissues thereof may be filed on one (1) day's notice. Only one tariff of this kind shall be in effect in one year and each successive issue shall specifically cancel the previous issue.

Supplements or reissues. One tariff per year.

10. NATURE OF TARIFF NOT TO BE CHANGED

No change in nature of tariff once filed.

(1) A tariff having been filed, containing class rates only, it is not permissible to add commodity rates by means of a supplement thereto; likewise, class rates shall not be added by supplement to a filed commodity tariff.

(2) The above does not prohibit the filing of a tariff containing both class and commodity rates, but the nature of the tariff once filed shall not be changed by the filing of a supplement.

11. REFERENCE TO ORDERS AND JUDGMENTS

Reference to Board's Orders or Judgments to appear in schedules.

(1) Schedules or portions thereof issued pursuant to judgments or orders of the Board shall give reference to the number and date of the order or date of the judgment as follows:—

"Issued in compliance with Order No..... dated..... of the Board of Transport Commissioners for Canada."

or

"Issued under Judgment of the Board of Transport Commissioners for Canada dated....."

12. SUPPLEMENTAL MATTER

(1) Subject to the provisions of paragraphs (2) and (3) hereof, and except as otherwise provided in Rules 9 (1) (f); 9 (2) (d); 14 (5); 16 (4); 25 (4); 28 (2), tariffs may have only the following supplements in effect at one time:—

<i>When tariff comprises</i>	<i>Regular supplements</i>
4 pages or less (see note)	None
5 to 16 pages	1
17 to 80 pages	2
81 to 200 pages	3
Over 200 pages	4

NOTE:—Tariff must show in upper margin “No supplement will be issued to this tariff except for purpose of cancellation”.

(2) When the smallest supplement authorized by paragraph (1) hereof contains four or more pages, one additional supplement to those authorized therein may be issued provided that the matter contained in the said additional supplement be carried forward into the next regular supplement if such matter be in effect at that time.

(3) No supplements in excess of those authorized in paragraphs (1) and (2) hereof may be issued unless a prior application is made to the Director, Traffic Department of the Board, and special permission is granted therefor. Such application must state the reasons for publication, the CTC and supplement numbers and the number of pages to be contained therein. Such applications, if granted, will be assigned a special permission number, which can be used only for the specific supplement concerned, and the title page of the supplement must bear the following inscription:—

“This additional supplement is issued under authority of Special Permission No....., dated..... of the Board of Transport Commissioners for Canada.”

13. CANCELLATION OF SCHEDULES

(1) Cancellation of a tariff also cancels all supplements thereto in effect at that time.

(2) When a schedule or any portion thereof has been cancelled, it cannot be reinstated other than by republication in the regular manner.

(3) (a) A tariff may only be cancelled by a supplement thereto or by another tariff. Cancellation of a tariff by a supplement to another tariff is not permitted.

(b) When one tariff is cancelled by another, the tariff effecting the cancellation shall be in the same CTC series; except that, if a carrier's tariff is to be displaced by a tariff of an agent duly appointed by power of attorney, the agent's tariff shall either specifically cancel, or show that it supersedes, the carrier's tariff. In the latter case, the carrier's tariff must be cancelled by a supplement thereto and show reference to the CTC number of the agent's tariff.

Cancellation
by two or
more tariffs.

(4) When a tariff is superseded by two or more tariffs, the cancellation shall be accomplished by supplement to the tariff to be cancelled. Such supplement shall show, as to the specific matter to be cancelled, full CTC reference to the tariffs in which such matter will thereafter be found. If future rates are to be the class rates, it will be sufficient to provide in the cancellation supplement the following: "Class rates apply in future". The new tariffs shall show reference to the cancelled tariff by a notation reading: "Supersedes CTC..... to the extent shown in supplement No..... thereto."

Transfer
from one
tariff to
another.

(5) If it is desired to transfer tariff matter from one tariff to another, it shall be accomplished by specific cancellation by supplement to, revised page of, or reissue of the tariff in which it is in force showing full CTC reference to the schedule in which it is published in future. The schedule containing the matter so transferred shall correspondingly show reference to the tariff in which it was formerly published.

Partial.
cancellation.

(6) If a schedule is issued which partially supersedes another schedule in force at the time, it shall specifically state the portions of such other schedule which are thereby superseded. The conflicting portions of the former schedule shall at once be correspondingly amended in the regular way. It will not be necessary, however, in commodity tariffs to give reference to class-rate tariffs that may be affected.

14. SUSPENSION

Suspended
portions
to be
restored.

(1) When any of the provisions of schedules are suspended by order of the Board, the issuing carrier or agent shall immediately file appropriate schedules restoring the provisions which were to be cancelled by the suspended schedules.

Restoring
suspended
portions.

(2) When the Board vacates an order of suspension, an appropriate schedule putting into effect the suspended provisions and terminating the restored provisions may be filed on one (1) day's notice, but not earlier than the effective date originally proposed.

Cancellation
of suspended
items.

(3) When the Board orders the cancellation of the suspended provisions of a schedule, the suspended matter therein shall be cancelled by filing an appropriate schedule on one (1) day's notice.

When
Interstate
Commerce
Commission
orders.

(4) When the Interstate Commerce Commission suspends, vacates the suspension of or orders the cancellation of suspended matter in a schedule applicable between United States and Canadian points, the provisions of this rule may be applied thereto.

Supplements.

(5) Supplements to effect the foregoing may be issued without regard to Rule 12.

15. STANDARD TARIFFS

Submission
for approval.

(1) Standard tariffs of maximum tolls and every amendment thereto must be submitted by each carrier, in triplicate, for approval by the Board without the effective date being shown therein.

Publication
in Canada
Gazette.

(2) Standard schedules of rail carriers, after approval by the Board, shall be published, with a notice of such approval, in two consecutive weekly issues of the *Canada Gazette*.

Filing of
approved
schedules.

(3) After compliance with the foregoing provisions, the schedules shall be filed by each carrier in the regular manner with a reference appearing thereon to the order number of approval.

16. SPECIAL TARIFFS

(1) Except by authorization of the Board, no toll in a "Special Tariff" may be increased until such toll has been in force for at least thirty (30) days; or no toll therein may be reduced until such toll has been in force for at least three (3) days.

Changes only on proper notice.

(2) If a "Special Tariff" schedule has been filed increasing a toll on thirty (30) days' notice and if, prior to the effective date, it is desired to modify the amount of the increase, a schedule may be filed on not less than three (3) days' notice to effect such modification upon the same effective date as proposed for the original increase.

Modification of changes before effective date.

(3) "Special Tariff" schedules, or tolls therein, may be published to expire on a named date, but such date of expiration must not be earlier than thirty (30) days after the effective date of the tariff, or the actual effective date of such tolls therein.

Expiration by limitation.

(4) If a "Special Tariff" is filed cancelling another special tariff and, after such filing and prior to the effective date of the new tariff, a supplement to the tariff to be cancelled should be lawfully issued, rates in such supplement could not be continued in effect for the full period of notice for the reason that cancellation of the tariff also cancels supplements thereto. In such cases, supplements containing changes not included in the new tariff shall be issued and filed to both tariffs and shall contain no other matter than the rates sought to be made effective. Such bridge supplements will be exempt from the provisions of Rule 12.

Bridge supplements.

17. COMPETITIVE TARIFFS

(1) Competitive rates comprising reductions from existing published rates which, owing to the exigencies of competition of transportation services not subject to the Board's jurisdiction, are urgently required to be brought into immediate effect without previous notice to the Board, may be acted upon before filing with the Board, but the initial carrier, or duly appointed agent, must forthwith publish such rates and file the same with the Board, effective as from the date of the movement of the traffic. The filing advice covering the filing of such schedule shall be accompanied by a clear statement of the reasons for such publication, the name of the party for whom the rate was made, the rate and the name of the carrier with whom competing, the rate which would otherwise apply in the absence of such publication, and such other information as will satisfy the Board as to the bona fides of the action taken.

Rates to meet unregulated competition may be filed without notice.

(2) Competitive rates (local or joint) comprising reductions from existing published rates may be published without prior notice where such action is to equalize existing rates of competing routes (subject to recognized differentials, if any, between rail and water carriers) between common points of carriers subject to the Board's jurisdiction. The filing advice shall be accompanied by a clear statement of the necessity for such action and detailed reference to the rate and tariff authority of the existing published rate of the other carrier or carriers.

Explanation to be given.

Equalizing tolls of other carriers without notice.

(3) Competitive rates may be published to expire on any date subsequent to the effective date thereof provided that such date of expiration is shown in the schedule when issued.

Expiration by limitation.

18. CONSOLIDATION OF TARIFF MATTER

Tolls of like
kind in one
tariff.

(1) Except as otherwise authorized by the Board, carriers or agents are required to refrain from issuing a variety of separate tariffs when the subject matter thereof could be grouped conveniently into tariffs of general application.

Specific
commodity
tariff.

(2) Except as otherwise provided in this rule, if the volume of tariff matter relating to one commodity or groups of related commodities is sufficient to justify the issuance of a specific commodity tariff, such tariff shall include all rates on that commodity within the area covered thereby.

General
commodity
tariff.

(3) Where there is insufficient volume to justify the publication of a specific commodity tariff, a general commodity tariff shall be issued and contain all commodity rates, other than commodities covered by specific tariffs, applicable within a recognized rate area.

Additional
general
tariff.

(4) Carriers will be permitted, however, to have one additional tariff for application within a recognized rate area, containing only miscellaneous sub-normal competitive rates. No other single tariff will be accepted for filing.

19. RULES AND REGULATIONS TARIFF

Rules and
regulations
may be in
separate
tariff.

(1) A separate tariff may be filed under CTC number containing rules and regulations which are to govern certain tariffs and such rules and regulations may be made part of the rate tariff by the following reference:—

“Governed, except as otherwise provided herein, by rules and regulations published in CTC No. supplements thereto or reissues thereof.”

All rules
in one
tariff.

(2) Only one such tariff shall be published by any one carrier or agent to apply within a recognized rate area.

20. EXPLOSIVES AND DANGEROUS ARTICLES REGULATIONS

Transportation
of explosives
governed
by Board's
regulations.
Tariffs must
refer thereto.

(1) The transportation of explosives and other dangerous articles by Canadian railroads is governed by the regulations prescribed or approved by the Board as duly filed under appropriate CTC number.

(2) Schedules containing rates for the transportation of these commodities shall contain a notice to the effect that they are governed by the said regulations and reference thereto by CTC number shall appear in the said schedules.

21. OFFICIAL DISTANCE TABLE

Official
distance
table to
be filed.

(1) Each carrier shall publish, and file in duplicate under a CTC number, an “Official Distance Table,” which shall contain the exact distance, extended not to exceed two decimal points, between its stations.

Mileage
to or from
unnamed
points.

(2) The Official Distance Table of rail carriers shall contain the following clause:—

“In computing the distance governing traffic handled under mileage rates to unloading or from loading sidings or to or from other points not named as stations herein, the mileage published to or from the nearest station or point thereto shall be used. (See Exception.)

Exception

When such published distance is a competitive distance resulting from lower mileage of a competing carrier, the distance to be used, in the case of non-competitive traffic, shall be the normal mileage via the line which carries the traffic."

(3) Unless included in the "Official List of Freight Stations in Canada" (See Rule 24), the Official Distance Table of rail carriers shall also show the names of the points at which freight traffic may be interchanged with the lines of connecting carriers, the names of the carriers with which freight traffic may be interchanged at such points, whether carloads or less, or both, and the method of interchange (switch connection or cartage). If connection is made through an intermediate carrier, it shall be so shown.

(4) Schedules which contain mileage rates shall give reference, by CTC number, to the Official Distance Table.

(5) One schedule containing both freight and passenger mileage will be deemed sufficient, but, if both are included in the one schedule, CTC numbers shall be allotted in both freight and passenger series and copies must be filed under separate filing advices in both series.

22. RATE BASIS BOOKS

(1) Separate tariffs may be filed such as "Territorial Directories" or "Rate Bases", showing lists of points taking a common rate, and points taking arbitraries or differentials to be added to or deducted from base point rates.

(2) Such tariffs may also contain routing instructions provided duplicate or conflicting routing instructions are not also shown in the base rate tariff or in publications which govern that tariff.

(3) When such a separate publication is used, reference thereto must be made in the rate tariff to the CTC number of the rate basis book and all carriers shown as participating carriers in the rate tariff shall also be shown in the separate rate basis book.

(4) No one rate tariff may be governed by more than two such basis books—one for points of origin and one for points of destination.

(5) When the arbitraries or differentials to be added to or deducted from the base point rates are subject to a different classification, or classification exceptions, than apply in connection with the base rates, reference to such classification and exceptions thereto must be made immediately in connection with the arbitraries or differentials.

(6) The rates and charges made by the combined use of the base rate tariff and basis books shall constitute through rates and charges. All governing rules and regulations should be published in the base rate tariff or made part thereof, by reference. If, however, it is necessary in particular cases to include rules or regulations in the rate basis books, such rules must not duplicate or conflict with rules governing the base rate tariff.

Interchange points.

Mileage rates to be governed by Official Distance Table. Freight and passenger distances in same schedule.

Territorial Directories and Rate Bases in separate tariffs.

Routing.

References in rate tariff.

Limited number of basis books.

Different classifications to be clearly shown.

Combined use of tariff and basis book constitutes through rate.

23. SPECIAL SERVICES TARIFFS

Rates and
rules for
special
services
in
separate
tariffs.

(1) Unless shown in individual rate tariffs, affected thereby, each carrier or agent shall publish, under proper CTC number, and file separate tariffs containing in clear and specific form and terms the rules governing and rates and charges for special and terminal services, such as demurrage, switching, icing, storage, elevation, cartage, loading, unloading, absorptions, allowances, weighing, diversion, etc., which in any way increase or decrease the amount to be paid on any shipment or which increase or decrease the value of the service to the shipper.

Consolidation
of special
service
provisions
in one
tariff.

(2) All such separate tariffs shall include in the one issue all special arrangements of a like kind and no carrier or agent is authorized to issue more than one tariff therefor. As far as is practicable, only one tariff should be issued to include miscellaneous special arrangements.

Reference
to separate
tariffs in
tariffs
affected.

(3) Tariffs affected thereby shall either specifically refer thereto by CTC number or by an omnibus clause providing, in the absence of specific provisions, that shipments made under the rates contained therein will be entitled to such allowances and privileges and subject to such rules and regulations for the (here name specifically the services) of participating carriers performing the services as per tariffs lawfully on file with the Board of Transport Commissioners for Canada.

24. STATION LISTS (RAIL CARRIERS ONLY)

Separate
tariff for
station
data,
abandonments
and additions.

(1) A tariff publication, entitled "Official List of Freight Stations in (Eastern or Western) Canada", may be filed containing:—

(a) Alphabetical and geographical list of stations with index numbers and railroad locations.

(b) Prepay requirements.

(c) Station facilities.

(d) Restrictions as to non-acceptance and non-delivery of freight.

(e) Addition and change in names of stations.

(f) Abandonment of stations.

Interchange
points may
be included
in tariff.

(g) Points at which freight traffic may be interchanged with connecting carriers, the names of such connecting carriers, and the method of interchange (switching or cartage). If connection is made through an intermediate carrier, it shall be so shown.

No rates
or charges
to be shown.

(2) No rates or charges, nor any information which will in any way increase or decrease the rate or charge in the tariffs making reference to this publication, shall be shown therein.

Notice
of changes.

(3) Changes in such a tariff, involving only abandonment of stations, names of stations, prepay requirements, station facilities and restrictions as to non-acceptance and non-delivery of freight, may be made on not less than one (1) day's notice by noting thereon reference to this rule, but no change shall be made therein in advance of the date approved by the Board where its prior approval is necessary.

(4) Tariffs to be governed by the station lists, as above authorized, shall make reference thereto in the following manner:—

Governing
rule in
rate tariffs.

“Governed as to additions and abandonment of stations and, except as otherwise shown herein, as to prepay requirements, changes in names of stations, restrictions as to non-acceptance or non-delivery of freight, and changes in station facilities, by (follow with full CTC reference to the governing tariff or tariffs).”

Provided that tariffs published in the United States applicable to points in Canada, or between points in Canada and points outside of Canada, may refer to the list of open and prepay stations No. 59, Agent A. P. Leland's CTC No. A23 or subsequent reissues thereof.

In United
States lines'
tariffs.

(5) When a station is to be abandoned, the effective date of abandonment shall be that published in an appropriate amendment to the Official List of Freight Stations, as herein authorized to be published, and all rates to or from such station shall become inapplicable from the abandonment date so specified. Abandoned stations shall be eliminated from each tariff, naming such station, in the next ordinary supplement or revision thereto following the effective date of the abandonment. In eliminating abandoned stations from tariffs involved, it shall be accomplished by a specific notation or suitable rule reading substantially as follows:—

Abandonment
of stations
governed
by Official
List.

Eliminating
abandoned
stations from
tariffs.

Eliminate account station abandoned, effective as per Official List of Freight Stations (specify tariff reference) as amended, supplements thereto or reissues thereof, or prior amendments thereto or issues thereof.

Elimination by supplement is to be continued throughout the effectiveness of the tariff without indicating the effective date of the supplement when brought forward as reissued matter. The substance of the provisions of this paragraph shall be embodied as a rule in the Official List of Freight Stations.

(6) Changes in tariffs as a result of abandonment or changes in names of stations are not required to be indicated by symbols denoting an increase or decrease as described in Rule 6 (9); in lieu thereof a suitable uniform symbol may be used to indicate such changes.

Changes
denoted
by symbol.

25. TARIFF INDEX

(1) Subject to the provisions of paragraph (6) of this rule each carrier shall publish under a CTC number, and file in duplicate, a complete index of tariffs in effect including those which have been filed to take effect at a date subsequent to the issue date of the index.

Index
of tariffs
to be
filed.

(2) Such index shall be divided into three sections; first: a list of all tariffs in which the carrier is an initial carrier; second: a list of all tariffs in which the carrier is an intermediate or delivering carrier; third: a complete numerical list of its own tariffs by CTC numbers.

Arrangement
by
sections.

(3) The index shall show (a) the CTC number of each tariff including both its own issues and those issued by others, (b) name or initials of issuing carrier or agent, (c) a brief description of the character of the tariff (such as “class”, “commodity”, “class and commodity”, or, in alphabetical order, name of commodity, as “Grain and Grain Products”, “Lumber and Forest Products”, etc.), (d) points or territory from and to which the tariff applies. Supplements to tariffs are not to be included in the index.

Arrangement
of contents.

Supplements
and reissue
to make
corrections.

(4) If any changes occur in tariffs listed in the index, it shall be corrected to date either by reissue or by supplement. Such corrections shall be made at least every three months and the index reissued at least every two years. No more than five supplements thereto shall be in effect at one time. Rule 12 shall not apply.

Inclusion
of expired
or cancelled
tariffs in
index.

(5) When a tariff is issued subsequent to the last revision of the tariff index and such tariff expires or is cancelled prior to the next revision of the index, such cancelled or expired tariff shall be included in the next revision of the tariff index showing that it is a cancelled tariff and that it is inserted for record purposes only.

Subsidiary
lines may
be included
in index.

(6) Parent companies whose schedules include tariff matter of subsidiary lines may include the index for the subsidiary line in the parent companies' index in a separate section thereof. When the parent company does not publish all of the tariff matter (except standard tariffs) of the subsidiary line, the latter must also file the index under a CTC number in its own series.

List of
agent's
tariffs.

(7) Agents filing tariffs on behalf of carriers are requested to file a list of their tariffs in which all tariffs issued by the agent are shown by CTC number with a brief description of the character and applicable territory of each tariff. Such a list may be filed as a tariff under a CTC number of the agent's series or may be given a list number for identification purposes. Such list should be reissued at least yearly and revised at least every three months when changes occur in the tariffs so listed.

Freight and
passenger
in one
index.

(8) Indices of freight and passenger tariffs may be combined in the one publication. The combined index shall be divided into two separate parts and each part shall conform to the regulations respecting freight and passenger tariffs as the case may be. CTC numbers in both the freight and passenger series shall be shown thereon and it shall be filed separately in both series.

26. JOINT TARIFFS

(1) *Applying over more than one carrier:—*

Filing.

Unless filed by an agent under the provisions of Rule 27, joint tariffs applying over more than one carrier must be filed by the initial carriers under their own CTC numbers in the same manner as local tariffs. As far as practicable, it is desirable that multiple filing of the same tariff be avoided by issuance by an agent. Such joint tariffs shall provide that the joint rates therein include the transfer from one carrier to the other at intermediate interchange points on shipments handled through and not stopped for special services at such interchange points.

Tariffs
to include
transfer
at inter-
change points.

(2) *From Canada to a foreign country, or between Canadian ports through a foreign country:—*

Filing:
Canada
to, or
through
foreign
country.

Section 338 of the Railway Act requires the "several companies" to file joint tariffs applying (a) from a point in Canada through a foreign country into Canada, or (b) from a point in Canada to a foreign country. This is construed to require filing by the initial Canadian carrier, or an agent, on behalf of the "several companies" referred to in the Act.

(3) *From a foreign country into Canada, or between points in a foreign country through Canada:—*

Section 339 of the Railway Act requires the filing of joint tariffs on all traffic carried over a continuous route operated by any two or more carriers, whether Canadian or foreign, applying (a) from a point in a foreign country into Canada, or (b) from a point in a foreign country through Canada into a foreign country. Such tariffs shall be filed by the initial carrier or by an agent.

Filing from foreign country to, or through, Canada.

(4) *Routing:—*

(a) All joint tariffs must show the routing over which rates published therein apply stated in such manner that such routes may be definitely ascertained.

Routing must be shown.

(b) Routing shall be published in the tariff containing the rates or may be published in a separate tariff designated "Routing Guide" provided reference thereto by CTC number is specifically shown in the rate tariff.

Routing in tariff or in routing guide under CTC number.

(c) The routing guide shall be filed under a CTC number by the issuing carrier or agent.

(d) The routing guide shall show upon the title page the following notation:—

"The routes provided herein may be used only in connection with rates made subject hereto by specific CTC reference to this guide in tariffs containing such rates. Its use in connection with any tariff is restricted to the carriers and to the application provided in such tariff."

Restriction on use of routing guide.

(e) If desired, the following tariff provision may be incorporated in rate tariffs under the heading "Routing Instructions":—

"The rates named in this tariff will apply only via the routes and junction points authorized herein except that when in the case of pronounced traffic congestion (not an embargo), washout, wreck or other similar emergency, or through carriers' error, carriers forward shipments via other junction points of the same carriers or via the lines of other carriers parties to the tariff, the rate to apply will be that specified in this tariff, but not higher than the rate applicable via the route of movement."

Emergency routing.

NOTE:—If desired, the words "or via the lines of other carriers parties to the tariff" may be omitted from the emergency routing clause.

(f) When a tariff contains both local and joint rates and it is not intended that local rates to or from common points are to apply via joint routes, the fact shall be plainly stated in the tariff.

Local rates in joint tariff.

(5) *Concurrences:—*

(a) Intermediate and terminating carriers in Canada, participating in joint tariffs of carriers or agents applying between points in Canada, shall notify the Board of their assent to, and concurrence in, such joint tariffs by filing the appropriate concurrence prescribed in sub-paragraph (b) hereof.

Concurrence of intermediate and terminal carriers.

(b) Any of the following forms of concurrence may be used, which shall be signed by the officer appointed by by-law or resolution to prepare and issue tariffs, or by the agent appointed by power of attorney:—

SPECIFIC CONCURRENCE:—

“(Corporate name of concurring carrier)

Address and date

CTC CC. F. No.....

 cancels

CTC CC. F. No.....

SPECIFIC CONCURRENCE IN TARIFF CTC No.

ISSUED BY (Name of issuing carrier or agent)

To:

The Board of Transport Commissioners

for Canada,

Ottawa, Canada.

Form of
specific
concurrence
in one
tariff.

Subject to the undernoted exceptions, this is to certify that the (*name of concurring carrier*) assents to, and concurs in, the publication and filing of (*name of carrier or agent issuing tariff*) joint tariff CTC No. and supplements thereto in which this company is named as a participant insofar as that schedule contains rates or regulations applicable to or via (not from) this company's points, and hereby makes itself a party thereto and bound thereby.

Exceptions

(Here describe the extent to which the above provisions are limited—otherwise leave blank).

This certificate expires with the cancellation or expiration of the tariff to which it applies.

.....
(Corporate name of concurring carrier)

By
(Officer or agent)

CTC Atty. No. of agent.....

Duplicate mailed to.....
(name and address)."

(NOTE:—If the concurrence is to apply to a supplement this form may be appropriately modified.)

LIMITED CONCURRENCE:—

“(Corporate name of concurring carrier)

Address and date

CTC LC. F. No.....

cancels

CTC LC. F. No.....

To:

The Board of Transport Commissioners
for Canada,
Ottawa, Canada.

This is to certify that the *(name of concurring carrier)* Form of limited concurrence.
assents to, and concurs in, joint tariffs and supplements thereto
that may hereafter be published and filed by *(name of carrier or agent issuing tariffs)* in which this company is named as a
participant insofar as such schedules contain rates or regulations
applicable to or via (not from) this company's points, except
(state the extent of the exception)
and hereby makes itself a party thereto and bound thereby.

.....
(Corporate name of concurring carrier)

By

(Officer or agent)

CTC Atty. No. of agent.....

Duplicate mailed to.....
(name and address).”

GENERAL CONCURRENCE:—

“(Corporate name of concurring carrier)

Address and date

CTC GC. F. No.....

cancels

CTC GC. F. No.....

To:

The Board of Transport Commissioners
for Canada,
Ottawa, Canada.

This is to certify that the *(name of concurring carrier)* Form of general concurrence for all tariffs.
assents to, and concurs in, all joint tariffs and supplements thereto
that may hereafter be published and filed by *(name of carrier or agent issuing tariffs)* in which this company is named as a parti-
cipant, insofar as such schedules contain rates or regulations
applicable to or via (not from) this company's points, and hereby
makes itself a party thereto and bound thereby.

.....
(Corporate name of concurring carrier)

By

(Officer or agent)

CTC Atty. No. of agent.....

Duplicate mailed to.....
(name and address).”

Printing,
size and
numbering.

(c) Concurrences shall be legibly printed or typewritten (carbon copies are not accepted) on paper eight inches wide by ten and one-half inches long, and shall be given consecutive serial numbers, using a separate series for each form.

Filing.

(d) General and limited concurrences shall be mailed to the Director, Traffic Department, of the Board, and shall show thereon that the duplicate thereof has been forwarded to the carrier or agent in whose favour it is executed. If an acknowledgment is required from the Board, an additional copy shall be forwarded which will be stamped with date of receipt and returned to the issuing carrier.

Specific
concurrence
in one
tariff.
Mailing.

(e) A specific concurrence shall apply only to the schedule named therein and may not refer to more than one tariff. Such concurrence may be filed by mailing to the Director, Traffic Department, of the Board, or may be forwarded to the carrier or agent issuing the tariff concurred in, who will file it with the tariff.

Reference
to concurrence
in tariffs.

(f) Except as otherwise provided herein, schedules concurred in by specific, limited or general concurrences must show reference to the "CC", "LC" or "GC" serial number against the name of the concurring carrier in the schedule.

Subsidiary
lines to show
parent lines'
concurrence in
tariffs.

(g) Schedules naming subsidiary lines of parent companies as concurring carriers shall show reference to the serial number of the concurrence of the parent company against the name of the subsidiary line in the schedule.

Tariffs to
conform to
terms of
concurrence.

(h) Schedules which are issued pursuant to limited concurrences, or specific concurrences which are limited in scope, must conform to the terms of such concurrences. Schedules which do not conform to the precise limitations of the concurrence will be construed in the same manner as stated in sub-paragraph (k) hereof.

Revocation
notice.

(i) Concurrences may be revoked on not less than sixty (60) days' notice following the date of receipt by the Board of such revocation. Notice of revocation must include therein full details of the reasons therefor and shall be in the following form:—

“(Corporate name of carrier)

Address and date

REVOCATION OF

{ CTC GC. F. No.
 { CTC LC. F. No.
 { CTC CC. F. No.
 to tariff

To:
The Board of Transport Commissioners
for Canada,
Ottawa, Canada.

Form of
revocation.

Effective, concurrence noted above issued
by (corporate name of carrier) in favour of (name of carrier or
agent) is hereby cancelled and revoked.

Reasons
.....

.....
 (Corporate name of carrier)
By.....

Duplicate mailed to.....

(j) If it is desired to continue in effect any schedule issued under a general or limited concurrence to be revoked, a specific concurrence therefor shall be filed with the Board by the concurring carrier prior to the effective date of the revocation.

Specific concurrence required if tariffs continued in effect after revocation.

(k) When a concurrence is revoked, and the revocation is not disallowed by the Board, corresponding revision of the tariff or tariffs should be made effective upon proper notice not later than the effective date of the revocation. In the event of failure to so revise the applicable tariff or tariffs, the rates in such tariffs remain applicable and the carrier, having revoked its concurrence, is thereafter entitled to receive its local rates. If the tariff is published by a carrier, such carrier will be held liable to the carrier having revoked the concurrence for the difference in charges under the tariff as it is and as it would have been if corrected in accordance with revocation of concurrence. In the case of tariffs published by an agent, the other carriers constituting the through joint route will be held responsible for such difference in charges.

Revision of tariffs to conform to revocation.

Failure to comply with revised concurrence.

(l) Concurrences are not required in international tariffs; tariffs applying from a foreign country through Canada to a foreign country; or from foreign carriers in tariffs applying from Canada through a foreign country to a point in Canada.

Concurrences not required in international tariffs, etc.

(m) When, in accordance with the next preceding paragraph, a schedule names as a participating carrier a non-concurring carrier, the said schedule shall be deemed to be legally effective and the rates, charges or regulations therein properly applicable unless the non-concurring carrier shall have made formal application for, and received, an order of the Board disallowing the said schedule.

Legal tolls via non-concurring carrier.

(n) When two or more agents each file the same joint tariff, it is not required that an exchange of concurrences take place as between each group of carriers for whom each agent acts as attorney.

Exchange of concurrences between agents not required.

(o) When a carrier issues a joint tariff applying "between" its points and points of other carriers, it may omit reference to its own concurrence in such tariff, but shall show reference to the attorney and concurrence numbers of the other carriers concerned.

"Between" tariffs—issuing carrier's concurrence.

(p) When an issuing carrier publishes a tariff applying from points on other originating carriers, under authority of power of attorney of such carriers, and the tariff applies to or via the points on the issuing carrier, reference to the issuing carrier's concurrences to such other originating carriers is not required to be shown in such tariffs.

Issuing carrier's concurrences when publishing rates for other initial carriers.

27. POWERS OF ATTORNEY

(1) *Appointing a person as agent:—*

(a) The following form shall be used for an originating carrier (subject to sub-paragraph (b) hereof) to appoint a person as attorney and agent to file schedules, other than standard tariffs, and receive concurrences for it in its stead. Such authorization shall

Appointment of attorney and alternate by originating carrier.

also appoint an alternate agent to act in the event of the death or disability of the principal agent and may not contain authority to delegate to another the power thereby conferred:—

“(Corporate name of carrier)

Address

CTC PA. F. No.
cancels PA. F. No.

KNOW ALL MEN BY THESE PRESENTS:

THAT the (corporate name of carrier) has made, constituted, and appointed, and by these presents does make, constitute, and appoint (name of principal agent) its true and lawful attorney and agent for the said company, and in its name, place, and stead, to receive concurrences in, and to file, freight tariffs and supplements thereto, as required of common carriers by the Railway Act and/or the Transport Act, 1938, and by regulations established by the Board of Transport Commissioners for Canada thereunder, for the traffic and territory now herein named,

(describe traffic and territory)

until superseded or revoked in accordance with the regulations of the Board of Transport Commissioners for Canada.

Form of
power of
attorney
to appoint
a person
as an
agent.

AND the said (corporate name of carrier) does hereby give and grant unto its said attorney and agent full power and authority to do and perform all and every act and thing above specified as fully, to all intents and purposes, as if the same were done and performed by the said company, hereby ratifying and confirming all that its said attorney and agent may lawfully do by virtue hereof, and assuming full responsibility for the acts and neglects of its said attorney and agent hereunder.

And further, That the (corporate name of carrier) has made, constituted and appointed and by these presents does make, constitute and appoint as alternate (name of alternate agent) its true and lawful attorney and agent for said company and in its name, place and stead, in case and only in case of the death or disability of the said (name of principal agent) to do and perform the same acts and exercise the same authority as hereinabove granted to (name of principal agent).

In witness whereof the said company has caused these presents to be signed in its name by itspresident and to be duly attested under its corporate seal by itssecretary, at, in the Province (or State) of, on this day of, in the year of our Lord nineteen hundred and

(Corporate name of carrier)

By.....

ItsPresident.

Attest:

.....Secretary

(Corporate Seal)

Duplicate mailed to.....”

(b) When an agent files tariffs of widespread application which are, by reference, made part of carriers' tariffs such as classifications, equipment and station lists, basing tariffs, billing instructions, etc., his authority to so file must be by power of attorney, as prescribed herein, executed by each carrier shown as participating therein. Tariffs of general application.

(c) The term "disability" in the above form means resignation, permanent transfer to other duties, or other permanent absence of the principal agent. It does not mean temporary absence caused by vacation, illness or other causes. Resignation or permanent absence of agent.

(d) At least one (1) day before the date of filing of the first schedule by the alternate agent, such alternate agent must submit to the Board a sworn statement setting forth the reason or reasons which justify such exercise of authority. Sworn statement of alternate agent.

(e) After an alternate agent has once exercised the authority granted by the power of attorney, the principal agent named therein may not thereafter again exercise such authority under that document. Alternate succeeds principal agent.

(f) The death or disability of either the principal or alternate agent necessitates the execution of new powers of attorney naming the principal and alternate agents thereafter to serve. The new forms shall be forwarded to the Board within one hundred and eighty (180) days and shall cancel the effective documents. The new powers of attorney shall be secured by the new principal agent and forwarded by him to the Board all at one time. They will become effective on the date received by the Board. New powers of attorney to be filed.

(g) Upon the appointment of a new principal agent, the first schedule filed by him should list the new powers of attorney in the same manner as described in paragraph (3) (g) of this rule. This new listing should be preceded by a substitution notice reading substantially as follows:— Substitution of agents in tariffs.

Substitution of Agent

The powers of attorney issued in favour of (*name of former principal agent*) have been cancelled by powers of attorney in favour of (*name of new principal agent*) as shown hereunder.

(2) *Appointing another carrier as agent:—*

(a) The following form shall be used for an originating carrier to appoint, in its stead, another carrier as attorney and agent to file joint tariffs, other than standard tariffs, naming rates from points on its line to points on other carriers:— Appointment of another carrier as agent for originating carrier.

"(*Corporate name of carrier*)

Address

CTC Atty. F. No.
cancels Atty. F. No.

KNOW ALL MEN BY THESE PRESENTS:

THAT the (*corporate name of carrier*) has made, constituted and appointed, and by these presents does make, constitute and appoint (*name of carrier appointed agent*) its true and lawful attorney and agent for the said company, and in its name, place and stead, to file on its behalf, as required by the Railway Act

and/or The Transport Act, 1938, and by regulations established thereunder by the Board of Transport Commissioners for Canada, joint freight tariffs and supplements thereto applying FROM points on its line of railway TO or VIA the line of railway hereby appointed as agent, except

(If desired to limit the scope of the authority to exclude certain tariffs or territory, insert such limitation here, or if preferred, the authority may be stated specifically in the body hereof. If not limited, delete word "except".)

Form of
power of
attorney
to appoint
a carrier
as an
agent.

AND the said (*corporate name of carrier*) does hereby give and grant unto its said attorney and agent, full power and authority to do and perform all and every act and thing above specified as fully to all intents and purposes as if the same were done and performed by the said company, hereby ratifying and confirming all that its said attorney and agent may lawfully do by virtue hereof and assuming full responsibility for the acts and neglects of its said attorney and agent hereunder.

In witness whereof the said company has caused these presents to be signed in its name by its president and to be duly attested under its corporate seal by its secretary, at in the Province (or State) of on this day of in the year of our Lord nineteen hundred and

(*Corporate name of carrier*)

By

Its President

Attest

..... Secretary

(Corporate seal)

Duplicate mailed to....."

Modification
permitted for
subsidiary
lines.

(b) Subsidiary system lines may modify the form of attorney above to the extent necessary to comply with Rule 29 hereof.

(3) *General rule re powers of attorney:—*

Printing,
size.

(a) Powers of attorney shall be legibly printed or typewritten (carbon copies not accepted) on paper eight inches wide by ten and one-half inches long.

Numbering.

(b) Each form shall be consecutively numbered in a separate series of numbers for each form. Gaps or errors in numbers will necessitate explanation or correction; therefore, particular care should be exercised in the numbering.

Filing.

(c) Powers of attorney are to be forwarded addressed "Director, Traffic Department, Board of Transport Commissioners for Canada, Ottawa, Canada." The document must bear a notation that the duplicate thereof has been forwarded to the agent so appointed. If an acknowledgment is required, a copy must be submitted for that purpose which will be stamped with date of receipt and returned to the issuing carrier.

(d) If two or more carriers appoint the same agent, separate powers of attorney are required from each appointing carrier.

Separate forms from each appointing carrier.
Revocation.

(e) A power of attorney may be cancelled, either by substituting a new document specifically cancelling the effective document, or by formal notice of revocation. Such substitution or revocation shall be forwarded to reach the Board at least sixty (60) days before coming into effect and will not be deemed to be effective until that period of time has elapsed. Substitution or revocation which has not been acted upon by the agent at the effective date thereof will not be deemed to have become effective unless the carrier concerned has applied to and received from the Board an order of disallowance of the tariff or tariffs concerned.

Failure to act on revocation.

(f) The form of revocation shall be as follows:—

“(Corporate name of carrier)
Address and date

REVOCATION OF POWER OF ATTORNEY

CTC PA. F. No.
or
CTC Atty. F. No.

To:
The Board of Transport Commissioners
for Canada,
Ottawa, Canada.

Effective, power of attorney numbered as above, issued by (corporate name of carrier) in favour of (name of agent), is hereby cancelled and revoked.

Form of revocation.

(Corporate name of carrier)

By
Its President

Attest
..... Secretary
(Corporate seal)
Duplicate mailed to.....”

(g) Agents’ tariffs shall show the names of the carriers for whom they act with the serial number of the power of attorney authorizing the agent to publish and file the same. Schedules naming subsidiary lines of parent companies shall show reference to the serial number of the power of attorney of the parent company against the name of the subsidiary line.

Reference to powers of attorney to appear in agents’ tariffs.

(h) Agents’ schedules shall be deemed to have been filed with the Board only in behalf of the carriers shown therein in accordance with the provisions of sub-paragraph (g) hereof.

Filing of tariffs only for carriers shown.

(i) Agents’ schedules, applicable jointly between or from points on carriers who have each appointed separate agents, must be filed by each agent in its own CTC series; otherwise, all such originating carriers must appoint the one agent.

Joint agency tariffs to be separately filed.

28. TRANSFER OF OPERATING CONTROL (ADOPTION NOTICES)

Filing
adoption
notice.

(1) When the name of a carrier is changed, or when its operating control is transferred to another company, the carrier which will thereafter operate the properties shall file and post as a tariff an adoption notice, numbered in its CTC series, reading as follows:—

Form
of
adoption
notice.

“The (corporate name of adopting carrier) hereby adopts, ratifies and makes its own in every respect as if the same had been originally filed and posted by it, all freight tariff schedules, concurrences, divisions, powers of attorney or other instruments whatsoever, including supplements or amendments thereto, filed with the Board of Transport Commissioners for Canada by, or heretofore adopted by, the (corporate name of old company) prior to (date).”

(2) In addition to the above adoption notice, the new carrier shall immediately amend each of the tariffs of the former carrier covered by the adoption notice as follows:—

Amendment
to tariffs
showing
adoption.

“Effective (insert date shown in adoption notice), this tariff, or as amended, became the tariff of the (corporate name of new carrier) as per its adoption notice CTC No. —.”

When the tariff to be amended is in book or pamphlet form, the amendment shall be by supplement filed in the regular manner and shall contain no other matter. Rule 12 will not apply. When a loose leaf tariff is to be amended, a new page shall be inserted containing only the notice of adoption and shall remain in effect until the tariff is reissued or otherwise cancelled.

CTC
numbering.

(3) Subsequent supplements to such tariffs are to be numbered consecutively following the number of the adoption supplement. Successive issues of such tariffs shall specifically cancel the former tariff by CTC number and name of carrier, but shall be numbered in the CTC series of the new carrier.

Amending
tariffs to
show
adoption
when issued
by agents
or other
carriers.

(4) Schedules issued by other carriers or agents under power of attorney, in which the former carrier is named as a participating carrier, shall be amended to substitute the name of the adopting carrier in the first subsequent supplement which shall contain the following provision:—

“The (corporate name of adopting carrier) by its adoption notice CTC No. — has taken over the tariff schedules, etc., of the (corporate name of old carrier) and is hereby substituted for the former carrier wherever it appears in this tariff, effective (date of adoption).”

New powers
of attorney
and con-
currences
to be filed.

(5) Powers of attorney and concurrences adopted by the new carrier must be replaced within one hundred and twenty (120) days by new powers of attorney and concurrences of the adopting carrier, upon which documents reference must appear as to the cancellation of the documents of the old carrier.

29. SUBSIDIARY LINES

Subsidiary
lines in-
cluded in
parent
company's
tariffs.

(1) Companies owning or controlling separately operated subsidiary lines may include the subsidiary lines' tariff matter (other than standard tariffs) in the parent company's schedules.

(2) Each such subsidiary line must execute power of attorney appointing the parent company its agent and attorney on the form prescribed in Rule 27 (2). Power of attorney required.

(3) Such power of attorney shall be modified to also authorize the parent company to give and receive concurrences on behalf of the subsidiary line and may include an authorization to the parent company to execute powers of attorney on behalf of the subsidiary line. Modification of power of attorney.

(4) A subsidiary line, availing itself of the provisions of this rule, may not issue powers of attorney or concurrences direct to carriers or agents other than the parent company. Powers of attorney and concurrences only through parent company.

(5) Parent companies executing powers of attorney and concurrences on behalf of themselves and their subsidiaries shall modify the wording of such documents to the extent necessary to show they are issued "for itself and as agent and attorney for" the subsidiary lines. Reference to the "Atty." number should appear thereon. Parent company to show acting for subsidiary.

(6) Concurrences are not required from subsidiary lines in joint rates applicable between the subsidiary and its parent company when such tariffs are issued, under the provisions of this rule, by the parent company or a duly appointed agent. Joint rates between parent and subsidiary.

30. SPECIAL RATE NOTICES

(1) Under the provisions of Section 344 of the Railway Act and Section 31 of The Transport Act, 1938, carriers subject to the Acts are authorized to issue special rate notices between points which are not competitive in the following cases, namely:— Issuance only between non-competitive points.

(a) To provide for the prompt shipment of any freight which may unexpectedly offer and for which no suitable schedules have been prepared, on condition that the filing and publication of such schedules be immediately proceeded with, except where special notice has been issued to cover an individual consignment and the rate is not of a permanent character. Conditions under which may be issued.

(b) To provide for the disposition of shipments which may have been forwarded to the wrong destination, or which have been refused by the consignees, by returning them to the original points of shipment at less than the ordinary tariff rate, or by reforwarding at a reduced rate from the first to a second destination, in which case the published rate from the point of shipment to the first destination, added to the reduced rate from the first destination to the second, shall not be less than the published rate for a through haul from the original shipping point to the second or final destination. For disposition of shipments on hand at destination.

(c) To provide for the carriage of sample or trial shipments for testing purposes, with a view to opening up business, as, for example, a trial shipment of ore from a new mine to the smelter, at actual weight at the carload rate. Sample or test shipments.

(d) To provide for the removal of livestock by rail from exhausted grazing grounds to new pastures on the ranches of the northwest, for subsequent reshipment to the market. Livestock.

(e) To permit a carrier to carry fuel or other freight for its own employees at free or reduced rates. Such special rate notices need not be filed with the Board. Employee traffic.

Clean-up
of grain
storage.

(f) To provide for the movement of grain that may remain in country storehouses or elevators at the cleaning up of the season's business preparatory to the reception of the new crop, at carload rate and reduced minimum weight. Not more than one such special rate shall be issued per annum for each storehouse or elevator for each variety of grain.

Charitable
or relief
purposes.

(g) To provide for the carriage of supplies for charitable or relief purposes free or at reduced rates.

Definition of
"competitive
points".

(2) For the purposes of this rule, the term "competitive points" includes all points of origin and destination between which, under existing tariffs, traffic may be handled at equal rates (subject to recognized differentials between rail and water carriers) singly or jointly by two or more carriers.

Numbering
and mailing.

(3) These special rate notices, except as provided in paragraph (1) (e), shall be numbered consecutively with the prefix "CTC" and mailed to the Director, Traffic Department, as soon as issued.

Arrangement
of contents.

(4) They shall give reference to this rule and the particular paragraph thereof under which issued; they shall also show the name of the party for whose account it is issued; an exact description of the shipment; the tariff rate and reference that would have been charged in the absence of such notice; the effective and expiration dates; and shall exist merely for the purpose of giving effect to the rate to be charged for the specific shipment mentioned therein.

Reference to
tariff in
which rate to
be published.

(5) Except where issued to cover an individual consignment, special rate notices issued under paragraph (1) (a) of this rule shall show the CTC number of the tariff or supplement in which the rate will be published.

Cancellation.

(6) If not possible to give the information required by paragraph (5) of this rule, a cancellation of the special rate notice shall be filed at the same time as the publication thereof is made in a tariff and such cancellation notice shall give reference by CTC number to the tariff or supplement in which the rate is published.

Reference in
tariff to
former special
rate notice.

(7) The publication in the tariff shall show reference to the special rate notice in which the rate was formerly contained.

31. POSTING OF SCHEDULES

Posting of
railway
schedules.

(1) *Rail carriers:—*

(a) The posting, for public inspection, of rail carriers' schedules is governed by the provisions of Section 342 of the Railway Act.

(2) *Water carriers:—*

Posting of
water
carrier
schedules.

(a) A water carrier must post all of its schedules for public inspection at its head office and principal branch offices. It shall also post for public inspection at agency points all of the schedules applying from or to the ports or areas contiguous thereto. At every such head office, branch office, agency, or port at which traffic is handled, the carrier shall post in a prominent place a notice directing attention to the place where the schedules are kept on file for public inspection during office hours, and the agent or person in charge shall produce to any applicant, on request, any schedule so kept on file which he may desire to inspect.

APPENDIX A

Specimen Filing Advice

(To be prepared on paper measuring 8 x 10 inches or 8 x 10½ inches.)

(Corporate name of carrier or name of agent)

(Address)

Date _____

FILING ADVICE F. No.

To:

Director, Traffic Department,
Board of Transport Commissioners for Canada,
Ottawa, Canada.

In compliance with the requirements of the Railway Act, or The Transport Act, 1938, I transmit herewith, for filing with the Board, copies of freight schedules as follows:—

Supplement Number	Tariff CTC Number	Effective Date	Description

.....
Name

.....
Title

APPENDIX B

Specimen Form of Application for Relief from Tariff Rules

Name of carrier or agent

Address and Date

Application No.

To:—

Director, Traffic Department,
Board of Transport Commissioners for Canada,
Ottawa, Canada.

Authority is hereby requested to depart from the terms of Rule(s) of
Tariff Circular No. 1 when taking tariff action as follows:—

(Describe in detail—by accompanying exhibit if desired—the proposed
change or addition to be made in the tariff; the CTC reference; and the
exact nature of the relief desired.)

The following facts are submitted in justification of this application:—

(State fully the circumstances relied upon as justifying the application
to assist the Board in reaching a decision.)

.....
Name and title of officer

NOTE.—Number applications consecutively to identify reference thereto in
telegraphic replies. If telegraphic advice is desired, the application should so
state.

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SUMMARY OF ORDERS ISSUED BY THE BOARD

- 65686 Jan. 31—Declaring C.N.R. crossing of Highway No. 6 at mileage 34 Chandler Subd., Que., protected to Board's satisfaction.
- 65687 Jan. 31—Extending time within which C.N.R. were required to install flashing light signals and bell at crossing of 55th Avenue, Lachine, Que.
- 65688 Jan. 31—Approving construction of sewer under tracks of C.N.R. at mileage 119.45 Skeena Subd., Prince Rupert, B.C.
- 65689 Feb. 1—Amending Order No. 65046 providing for payment out of Railway Grade Crossing Fund for protection at crossing of Germain Street and C.N. Rys. at Rimouski, Que.
- 65690 Feb. 1—Extending time within which to install protection at crossing of Route No. 17, Parish of Ste. Madeleine de Rigaud, County of Vaudreuil, Que.
- 65691 Feb. 2—Approving extension to existing station building at Loretteville, Quebec. (C.N.R.)
- 65692 Feb. 3—Approving under Maritime Freight Rates Act tolls published in tariffs filed by C.N.R. under Sec. 3.
- 65693 Feb. 3—Approving agreement between The Bell Telephone Co. of Canada and La Compagnie du Telephone Saguenay-Quebec, dated Jan. 31, 1941.
- 65694 Feb. 5—Approving plan authorizing changes in derail system where the Fort William Electric Street Ry. crosses the C.N. Rys.' Mission Spur, Fort William, Ont.
- 65695 Feb. 3—Authorizing issuing of Licence No. C.T.C. (W.T.) 117 to the Canadian Pacific Railway Co.
- 65696 Feb. 6—Declaring C.P.R. crossing of highway just west of Glen Tay Station, Ont., protected to Board's satisfaction.
- 65697 Feb. 6—Declaring Lake Erie & Northern Ry. crossing of Boston Road one and one-half miles north of Dundurn, Ont., protected to the Board's satisfaction.
- 65698 Feb. 6—Authorizing C.N.R. to operate their passenger trains over crossing of C.P.R. at Ringold, Ont.
- 65699 Feb. 6—Authorizing C.N.R. to remove protective devices at crossing of highway and railway at Calhouns, N.B.
- 65700 Feb. 7—Declaring C.P.R. crossing of 104th Avenue, Edmonton, Alta., protected to satisfaction of the Board; switching movements over crossing to be protected by member of train crew.
- 65701 Feb. 7—Declaring C.P.R. crossing of Victory Highway No. 1 first just east of Mount Orford Station, Que., protected to Board's satisfaction.
- 65702 Feb. 7—Approving location of pipe lines, etc., of Imperial Oil Ltd. near the tracks of C.P.R. at Plenty, Sask.
- 65703 Feb. 7—Authorizing Town of Magog to construct level highway crossing of C.P.R. at Brassard Street, Magog, Que.
- 65704 Feb. 2—Authorizing New York Central Railroad Co. to install flashing light signals at crossing of Church Street, City of St. Thomas, Ont.
- 65705 Feb. 3—Declaring C.P.R. crossing of Ninth Avenue, Moose Jaw, Sask., protected to Board's satisfaction.
- 65706 Feb. 8—Approving under Maritime Freight Rates Act tolls published in tariffs filed by C.N.R. under Sec. 3.
- 65707 Feb. 8—Approving location of C.N. Rys. Western Standard Station No. 4A at Nut Mountain, Sask.
- 65708 Feb. 8—Extending time within which the Grand River Railway Co. is authorized to install protection at crossing of Dundas and Beverly Streets by Grand River Railway Co. and C.N. Rys. at Galt, Ont.
- 65709 Feb. 9—Authorizing Agreed Charge between the C.N. Rys., C.P.R. Co., Northern Alberta Railways Co. and Johnsson Bros. & Ostberg covering transportation of lumber and forest products between stations in Western Canada.
- 65710 Feb. 2—Authorizing New York Central Railroad Company to install flashing light signals at crossing of Stanley St., St. Thomas, Ont.

- 65711 Feb. 8—Authorizing C.N.R. and British Columbia Electric Railway Co. Ltd. to operate their trains through interlocking plant at Chilliwack, B.C.
- 65712 Feb. 9—Authorizing New York Central Railroad Co. to install electric short-arm gates on both sides of crossing of Talbot Street, Essex, Ont.
- 65713 Feb. 10—Declaring C.P.R. crossing of Awrey Township Road at mileage 58·01 Cartier Subd., Ont., protected to Board's satisfaction.
- 65714 Feb. 10—Approving Traffic Agreement between The Bell Telephone Company of Canada and La Compagnie de Telephone Nationale.
- 65715 Feb. 12—Authorizing Toronto, Hamilton & Buffalo Railway Co. to install flashing lights and bells at crossing of River Road at Coyle Station, Ont.
- 65716 Feb. 12—Authorizing C.P.R. to construct extension to branch line of railway to serve Canadian Industries Limited in Lot 45 St. James, Winnipeg, Man.
- 65717 Feb. 12—Declaring C.N.R. crossing of Provincial Highway No. 11 first west of Charlo Station, N.B., protected to Board's satisfaction.
- 65718 Feb. 12—Declaring C.P.R. crossing of highway at mileage 34·79 Willingdon Subd., Alta., protected to Board's satisfaction.
- 65719 Feb. 12—Authorizing location of pipe lines, etc., of British American Oil Company Ltd. near tracks of C.P.R. at Two Hills, Alta.
- 65720 Feb. 13—Approving under Maritime Freight Rates Act tolls published in tariffs filed by Dominion Atlantic Railway Co. under Sec. 9.
- 65721 Feb. 12—Approving location of pipe lines, etc., of Imperial Oil Ltd. near tracks of C.P.R. at Nipawin, Sask.
- 65722 Feb. 12—Approving location of pipe lines, etc., of Imperial Oil Ltd. near tracks of C.P.R. at Carievale, Sask.
- 65723 Feb. 12—Approving location of pipe lines, etc., of McColl-Frontenac Oil Company Ltd. near tracks of C.P.R. at Nipawin, Sask.
- 65724 Feb. 13—Approving under Maritime Freight Rates Act tolls published in tariffs filed by the Canadian Freight Association under Sec. 3.
- 65725 Feb. 12—Declaring C.N.R. crossing of Church Street six hundred feet west of Florence Station, N.B., protected to Board's satisfaction.
- 65726 Feb. 13—Approving under Maritime Freight Rates Act tolls published in tariffs filed by C.N.R. under Sec. 3.
- 65727 Feb. 13—Directing railway companies subject to Board's jurisdiction to amend their rates on dynamite, carloads.
- 65728 Feb. 12—Authorizing issuing of Licence No. C.T.C. (W.T.) 118 to The Niagara, St. Catharines & Toronto Railway Company.
- 65729 Feb. 14—Amending Order No. 62528 authorizing protection at crossing of C.N.R. near Scarborough Golf Club at mileage 321·85 Oshawa Subd., Ont.
- 65730 Feb. 14—Dismissing application of the Town of Aylmer, Que., for an Order directing Hull Electric Co. to provide & replace its westbound track on Main Street, Aylmer, Que.
- 65731 Feb. 14—Approving service station contract between The Bell Telephone Company of Canada and the Innerkip Rural Telephone Company, Limited.
- 65732 Feb. 15—Declaring Midland Railway Company of Manitoba crossing of Academy Road, Winnipeg, Man., protected to Board's satisfaction; present speed limitation of five miles per hour to be maintained.
- 65733 Feb. 15—Declaring C.N.R. crossing of highway second west of the main line switch at Melville, Sask., protected to Board's satisfaction.

The Board of Transport Commissioners for Canada

Judgments, Orders, Regulations and Rulings

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Application of A. D. Selick Company, Montreal, Que., for a ruling of the Board concerning the interpretation of Rule 6 of the Canadian Car Demurrage Rules with respect to bunching.

File 1700.427

RULING

By the Board:—

The Applicant and the Canadian Car Demurrage Bureau have set out their position and contentions in written submissions filed with the Board and stated they are prepared to have the matter disposed of by the Board upon these submissions.

That portion of Canadian Car Demurrage Rule 6, which is here in question, reads:—

"Car for unloading or reconsigning When, as the result of the act or neglect of any carrier, cars destined for one consignee, at one point, are bunched at originating point, in transit, or at destination, and are delivered by the line carrier in accumulated numbers in excess of daily shipments, the consignee shall be allowed such free time as he would have been entitled to had the cars been delivered in accordance with the daily rate of shipment."

Applicant states it is the traffic representative of various fruits and vegetable importing firms in Montreal; that its interpretation of the demurrage rule is at variance with that of the Demurrage Bureau. It states that while no guaranteed schedules are in effect, the vast majority of shipments originating in the State of California arrive at Montreal for the eleventh morning market while those from Florida arrive for the seventh morning market; that these dates have been applicable over any routings authorized by tariffs and that same date of arrival would still apply regardless of the originating point in either of these states. Applicant states:—

"Under these circumstances, it is our considered opinion, that the Canadian Car Demurrage Bureau should be authorized to consider

bunching claims on perishables, on the basis of each state as a unit, and disregard routings insofar as said routing is one of the generally accepted routes from point of origin to Montreal."

If, under Applicant's opinion as above expressed, the transit time stated governed in all cases, obviously, there would be no bunching in transit; consequently, the Application deals with the exceptions to this transit time.

The Demurrage Bureau advises it has consistently refused to recognize claims for bunching in transit on cars which do not have the same point of origin and travel via the same route, and takes the position that this is in accordance with the reading of the rule. It states the rule makes no reference whatever to shipments originating at more than one point, and asks: "how would it be possible to bunch cars at originating point when the originating points are not the same?"

While Applicant did not furnish a concrete example of how it considered bunching should be figured, the Demurrage Bureau furnished illustrations of its method and that suggested by Applicant and to which Applicant has taken no exception, and which is set out as follows:—

"As an illustration of the different types of bunching we offer the records of three cars of fruit shipped from Florida points, which are entirely fictitious but will help to exemplify our method of charting for bunching in transit, bunching after arrival at destination, and how allowance on account of bunching in transit would apply if complainants' suggestion were followed:

Car No.	Arr'd	Adv'd	Plc'd	Rel'd	Dem	Rfrg.	Penalty	Point of Shipment	Date of Billing
123456	1/8	8 p.m.	11 7a	12 p.m.				Pensacola	12/29
654321	1/9	9 p.m.	"	13 p.m.	1.00	2.00	5.00	Jacksonville	1/1
789678	1/10	10 p.m.	"	15 p.m.	2.00	4.00	30.00	Miami	1/3

Our method of computing bunching in transit: As the shipments originated at three different points we do not consider them bunched in transit, although all three cars were placed for unloading on the same date and at the same hour.

Complainants' suggested manner of arriving at allowance on account of bunching in transit: As the shipments originated in the same State it is their contention the three shipments should be considered as originating at the same point, and on this basis, after allowing for bunching, their free time would be as follows,— car shipped December 29th free time January 11th and 12th, car shipped January 1st free time would commence two days later than the first car and computed as of 7 a.m. January 13th, which would eliminate the \$1 demurrage, \$2 refrigerator detention and \$5 penalty against this car, and the car shipped on January 3rd the free time would start 7 a.m. following release of the previous car and eliminating Sunday 14th, would consist of January 15th, the car being made empty on the latter date the \$2 demurrage, \$4 refrigerator detention and \$30 penalty charge would be waived. The net result of figuring bunching in transit along these lines would be the cancellation of the \$44 assessed. In clarification of the penalty charge, it might be added here, this is assessable for Sundays and legal holidays after the expiration of the free time.

Our manner of allowing for bunching which takes place after arrival at destination, which we term terminal bunching, is as follows: the cars arrived at destination one day apart, namely, January 8th, 9th and 10th, and were all placed for unloading on January 11th at 7 a.m. The free time on the first arrival would be January 11th and 12th, the second car, arriving one day later, the free time would consist of

January 12th and 13th, and the third car, which arrived on the date following the previous one, the free time would consist of the 13th and 15th, eliminating the 14th, Sunday, for demurrage and refrigerator detention, which would also be waived in connection with the Transport Controller's penalty charge inasmuch as the allowance on account of terminal bunching would bring that day within the free time period. Again in this instance the entire assessment would be waived owing to terminal bunching.

I think it would be advisable for me to make it clear that railways do not undertake to guarantee transit time, and such time, whether scheduled or actual, is not used as a basic factor in arriving at allowance on account of bunching in transit, this being computed by correcting demurrage records so that if cars are shipped one day apart from the one shipping point they are tendered to consignees one day apart, and if two days apart then consignees are only held responsible on the basis of cars being delivered two days apart. The maximum allowance granted between placements on individual cars, account bunching in transit, is two days, which is the free time consignees would have received had cars been placed in the order shipped, as provided for in Rule 6 (2)."

This demurrage rule has been in effect since 1917 and enforced since that time in the manner described by the Demurrage Bureau. Inasmuch as this is only the second instance during these 27 years that there has been any reference to the Board concerning the Demurrage Bureau's interpretation of this rule with respect to the feature thereof here raised by Applicant, it would seem that, generally speaking, it has not been considered unreasonable or at variance with the reading of the rule.

Upon careful consideration of all that has been submitted by the parties here, we do not consider that the demurrage rule has been improperly interpreted nor do we feel that a case has been made out which would warrant our directing any change in the reading of the rule.

Ottawa, February 8th, 1945.

J. A. CROSS,
HUGH WARDROPE,
J. A. STONEMAN.
G. A. STONE,
F. M. MacPHERSON.

ORDER No. 65747

In the matter of the application of the Canadian Freight Association, under Section 322 of the Railway Act, for approval of proposed Supplement No. 10 to Canadian Freight Classification No. 19, on file with the Board under file No. 33365.134:

SATURDAY, the 17th day of February, A.D. 1945

J. A. CROSS, K.C., *Chief Commissioner.*

HUGH WARDROPE, *Asst. Chief Commissioner.*

J. A. STONEMAN, *Commissioner.*

G. A. STONE, *Commissioner.*

F. M. MACPHERSON, *Commissioner.*

Whereas notice has been given by the Canadian Freight Association in *The Canada Gazette* as required by Section 322 of the Railway Act, and copies of the said supplement furnished to the parties named in the General Orders of the Board Nos. 271, 348, 353, 469, and 471, with the request that their objections, if any, be filed with the Board—

It is ordered: That the said proposed Supplement No. 10 to Canadian Freight Classification No. 19 be, and it is hereby, approved, subject to the following changes:—

- (a) Items 19 to 21, Page 13, covering incandescent or fluorescent electric lamps, to be deleted pending further representations and decision of the Board in complaint filed by the Canadian General Electric Company Limited, Toronto, Ontario, concerning L.C.L. rating on electric fluorescent lamps; and
- (b) Item 6, Page 16, covering printed matter, paper or paperboard, having exchange value such as tickets, sales coupons and certificates, bound or unbound, to be deleted pending further representations and decision of the Board in complaint filed by the City of Edmonton.

J. A. CROSS,
Chief Commissioner,

ORDER No. 65752

In the matter of the application of Northwest Steamships Limited for a licence under Section 10 of The Transport Act, 1938: File No. 42076-2

TUESDAY, the 20th day of February, A.D. 1945

J. A. CROSS, K.C., *Chief Commissioner.*

HUGH WARDROPE, *Asst. Chief Commissioner.*

J. A. STONEMAN, *Commissioner.*

Upon the recommendation of the Assistant Director, Traffic Department of the Board—

It is ordered: That Licence Number C.T.C. (W.T.) 119 be issued to Northwest Steamships Limited for the period of one year commencing on the 15th day of January, 1945, licensing the following ships:

Vessel Name	Official Registry No.	Gross Tonnage
<i>A. A. Hudson</i>	148089	2,222
<i>Superior</i>	154471	1,774

to transport goods by water between all ports or places in Canada on Lakes Ontario, Erie, Huron (including Georgian Bay), and Superior, and their connecting waters, including the St. Lawrence River and its tributaries as far seaward as the west end of the Island of Orleans.

J. A. CROSS,
Chief Commissioner,

ORDER No. 65770

In the matter of the application of W. M. Matthews, Agent, Canadian Freight Association, hereinafter called the "Applicant," for permission to amend his Tariff C.T.C. No. 1391 on less than statutory notice, to correct an error:

File No. 27612-291

TUESDAY, the 27th day of February, A.D. 1945

J. A. CROSS, K.C., *Chief Commissioner.*
 HUGH WARDROPE, *Asst. Chief Commissioner.*
 G. A. STONE, *Commissioner.*

Upon its appearing that the provision, "In carloads, except as otherwise indicated," was through error omitted from List No. 5, Section 3, of Applicant's Tariff C.T.C. No. 1391—

It is ordered: That the Applicant be, and he is hereby, permitted to amend his Tariff C.T.C. No. 1391 effective on three days' notice to correct the said error.

J. A. CROSS,
Chief Commissioner,

ORDER No. 65777

In the matter of the application of the Ontario Car Ferry Co., Limited, for a licence under Section 10 of The Transport Act, 1938.

File No. 42076.30

WEDNESDAY, the 28th day of February, A.D. 1945

J. A. CROSS, K.C., *Chief Commissioner.*
 HUGH WARDROPE, *Asst. Chief Commissioner.*
 G. A. STONE, *Commissioner.*
 F. M. MACPHERSON, *Commissioner.*

Upon the report and recommendation of the Assistant Director, Traffic Department of the Board—

It is ordered: That Licence Number C.T.C. (W.T.) 120 be issued to the Ontario Car Ferry Co., Limited, for the period of one year commencing on the 15th day of January, 1945, licensing the following ships, namely:—

Vessel Name	Official Registry No.	Gross Tonnage
<i>Ontario No. 1</i>	125983	5,146
<i>Ontario No. 2</i>	137978	5,568

to transport passengers by water between all ports or places in Canada on Lake Ontario.

J. A. CROSS,
Chief Commissioner.

ACCIDENTS REPORTED TO THE OPERATING DEPARTMENT BOARD OF TRANSPORT COMMISSIONERS FOR CANADA, JANUARY, 1945

Railway Accidents193 with 28 killed and 349 injured
Level Crossing Accidents 24 with 1 killed and 40 injured

	Killed	Injured
Passengers	2	166
Employees	12	176
Others	15	47
Totals	29	389

DETAILS OF ACCIDENTS AT HIGHWAY CROSSINGS

Accidents	K.	I.	
			NOVA SCOTIA
1	-	2	Automobile ran into side of train. Licence, N.S. 27724.
			QUEBEC
1	-	3	Automobile ran into side of train. Licence, Que. 63800.
			ONTARIO
1	-	1	Automobile ran into side of train. Licence, Ont. 82-R-99.
1	-	2	Automobile ran into side of train. Licence, Ont. 423-K-6.
1	-	2	Auto truck drove onto crossing in front of approaching train and was struck. Licence, Ont. 84240-C.
1	-	1	Auto truck drove onto crossing in front of approaching train and was struck. Licence, Ont. 29336-C.
1	-	1	Automobile struck by a snow-plow. Licence, Ont. 598-F-2.
1	1	3	Auto truck drove onto crossing in front of approaching train and was struck. Licence, Ont. 75948-C.
1	-	1	Automobile drove onto crossing in front of approaching train and was struck. Licence, Ont. 319-J-7.
1	-	1	Horse-drawn sleigh drove onto crossing in front of approaching train and was struck.
1	-	1	Automobile ran into side of train. Licence, Ont. J-5606.
			MANITOBA
1	-	1	Automobile drove onto crossing in front of approaching train and was struck. Licence, Man. 50-159.
			SASKATCHEWAN
1	-	1	Auto truck ran into side of train. Licence, Man. T-20-000.
1	-	1	Auto truck drove onto crossing in front of approaching train and was struck. Licence, Sask. 1880.
1	-	2	Automobile ran into side of train. Licence, Sask. 34056.
1	-	1	Auto truck ran into side of train. Licence, Sask. C-4554.
1	-	1	Automobile drove onto crossing in front of approaching train and was struck. Licence, Sask. 13021.
1	-	5	Auto truck struck by Track Motor Car. Licence not given.
1	-	1	Auto truck drove onto crossing in front of approaching train and was struck. Licence, Sask. C-9974.
			ALBERTA
1	-	5	Automobile ran into side of train. Licence, Alta. 47-115.
1	-	1	Auto truck drove onto crossing in front of approaching train and was struck. Licence, Alta. PSV-1158.
1	-	1	Horse-drawn sleigh struck by train.
			BRITISH COLUMBIA
1	-	1	Auto truck drove onto crossing in front of approaching train and was struck. Licence, B.C. CC-469.
1	-	1	Army Transport truck ran into side of train. Licence, B.C. N-3-644.

Of the 24 accidents at Highway Crossings, 22 occurred at Unprotected Crossings and 2 at Protected Crossings. Twelve of the accidents occurred after Sunrise and Twelve after Sunset.

March 3rd, 1945.

SUMMARY OF ORDERS ISSUED BY THE BOARD

- 65734 Feb. 15—Extending time within which to install two flashing light signals and one bell at crossing of Lakehead Division over Arthur St., Fort William, Ont. (C.N. Rys.)
- 65735 Feb. 15—Extending time within which to install two flashing light signals and bell at crossing of Angus St., East Angus, P.Q. (C.N.R.)
- 65736 Feb. 15—Declaring C.N.R. crossing of highway first south of Osler Station, Sask., protected to Board's satisfaction.
- 65737 Feb. 15—Declaring C.N.R. crossing of Parker Avenue at Portage Junction, Man., protected to Board's satisfaction.
- 65738 Feb. 15—Declaring C.N.R. crossing of Wilhelm Street, Kitchener, Ont., protected to the Board's satisfaction, speed limitation of 10 miles an hour to be maintained.
- 65739 Feb. 15—Authorizing City of Galt to construct public highway crossing over tracks of Lake Erie & Northern Railway Co. at South Water Street, Galt, Ont.
- 65740 Feb. 15—Declaring C.N.R. crossing of Highway No. 11 first west of Driftwood Shelter, Ont., protected to Board's satisfaction.
- 65741 Feb. 16—Approving installation of pipe lines, etc., of McColl-Frontenac Oil Co., Ltd., near C.N.R. tracks at Valleyfield, Que.
- 65742 Feb. 16—Declaring Algoma Central & Hudson Bay Railway crossing of Wellington Street first north of Steelton Station, City of Sault Ste. Marie, Ont., protected to Board's satisfaction.
- 65743 Feb. 16—Approving changes at C.N. Rys. and Port Arthur Electric Railway crossings in the City of Port Arthur, Ont.
- 65744 Feb. 16—Extending time within which to install protection at highway crossing just east of Lachevrotiere Station, Que. (C.P.R.)
- 65745 Feb. 17—Declaring C.N.R. crossing of highway first north of Mill Street Junction, Angus, Ont., protected to Board's satisfaction.
- 65746 Feb. 17—Authorizing C.P.R. to use and operate unloading trestle on spur serving James Sowards Coal Co. Ltd., Kingston, Ont.
- 65747 Feb. 17—Approving Supplement No. 10 to Canadian Freight Classification No. 19, subject to certain changes.
- 65748 Feb. 19—Extending time within which C.P.R. may install flashing light signals and bell at crossing of Regent Street, Sudbury, Ont.
- 65749 Feb. 19—Approving C.P.R. plan showing protection installed at Main Street crossing, Buckingham Junction, Que.
- 65750 Feb. 19—Extending time within which C.N.R. may install flashing light signals and bell at crossing of Cawthra Road, Twp. of Toronto, Ont.
- 65751 Feb. 20—Authorizing Pere Marquette Railway Company to carry out rearrangements at interlocking plant, at the crossing of its tracks, Blenheim, Ont.
- 65752 Feb. 20—Authorizing issuing of Licence No. C.T.C. (W.T.) 119 to Northwest Steamships Limited.
- 65753 Feb. 20—Approving station building to be erected by C.N.R. at Albanel, Que.
- 65754 Feb. 21—Declaring C.N.R. crossing of highway third west of Munson Station, Alta., protected to Board's satisfaction.
- 65755 Feb. 21—Declaring C.N.R. crossing of Victoria Avenue one-quarter of a mile west of Thamesville Station, Ont., protected to Board's satisfaction.
- 65756 Feb. 21—Authorizing C.P.R. to install flashing light signals and bell at crossing of highway east of Bourget Station, Ont., mileage 61.31 Montreal and Ottawa Subd.
- 65757 Feb. 22—Approving changes to automatic signal protection at crossing of New York Central Railroad and C.P.R. near Appin, Ont.
- 65758 Feb. 22—Declaring C.P.R. crossing of Cardigan Street, Guelph, Ont., protected to Board's satisfaction; present speed limitation of ten miles per hour to be maintained.
- 65759 Feb. 22—Approving location of pipe lines, etc., of Imperial Oil Ltd., near tracks of C.P.R. at Sylvania, Sask.
- 65760 Feb. 22—Approving location of pipe line, etc., of Imperial Oil Ltd., near tracks of C.P.R. at Pontrilas, Sask.
- 65761 Feb. 22—Approving location of pipe line, etc., of Imperial Oil Ltd., near tracks of C.P.R. at Codette, Sask.

- 65762 Feb. 22—Authorizing C.P.R. to construct additional track across Pacific Ave., and relocated track across Alexander Ave., City of Winnipeg, Man.
- 65763 Feb. 24—Approving location of additional vertical storage tank, etc., of McColl-Frontenac Oil Co. Ltd., near C.N.R. tracks at Hanley, Sask.
- 65764 Feb. 24—Approving location of pipe lines, etc., of Imperial Oil Ltd., near tracks of C.N.R. at Porcupine Plain, Sask.
- 65765 Feb. 26—Approving under Maritime Freight Rates Act tolls published in tariffs filed by C.P.R. under Sec. 9.
- 65766 Feb. 26—Approving under Maritime Freight Rates Act tolls published in tariffs filed by C.P.R. under Sec. 9.
- 65767 Feb. 26—Declaring C.N.R. crossing first east of station at Emo, Ont., protected to Board's satisfaction.
- 65768 Feb. 26—Declaring C.P.R. crossing of Barnard Ave., first south of Vernon Station, B.C., protected to Board's satisfaction; present speed limitation of six miles per hour to be maintained.
- 65769 Feb. 26—Declaring Toronto, Hamilton & Buffalo Ry. crossing of Barton Street, Hamilton, Ont., protected to Board's satisfaction; present speed limitation of fifteen miles per hour to be maintained.
- 65770 Feb. 27—Authorizing Canadian Freight Association to amend its Tariff C.T.C. No. 1391 on less than statutory notice, to correct an error.
- 65771 Feb. 26—Approving location of pipe lines, etc., of McColl-Frontenac Oil Co., Ltd., near C.N.R. tracks at Norwich, Ont.
- 65772 Feb. 26—Approving location of pipe lines, etc., of British American Oil Co., Ltd., near C.N.R. tracks at Bonnyville, Alta.
- 65773 Feb. 26—Extending time within which C.N.R. was to install protection at crossing of Main Street, Palmerston, Ont.
- 65774 Feb. 26—Relieving C.N.R. from erecting and maintaining fences, etc., at mileage 63·0, to mileage 65·5 Huntsville Sub. Allandale Station, Ont.
- 65775 Feb. 27—Approving protection installed at crossing of Huron Road and Essex Terminal Railway, Windsor, Ont.
- 65776 Feb. 28—Authorizing C.N.R. to erect splash guard on highway portion of bridge at Pickering, Ont.
- 65777 Feb. 28—Authorizing issuing of Licence No. C.T.C. (W.T.) 120 to Ontario Car Ferry Co., Limited.
- 65778 Feb. 27—Authorizing C.P.R. to reconstruct bridge over Little Current Channel between Goat and Manitoulin Islands, Ont.
- 65779 Mar. 1—Approving under Maritime Freight Rates Act tolls published in tariffs filed by C.N.R. under Section 3.
- 65780 Mar. 1—Declaring C.P.R. crossing of Ingersoll Avenue, Woodstock, Ont., protected to Board's satisfaction; present speed limitation of ten miles per hour to be maintained.
- 65781 Mar. 1—Declaring C.N.R. crossing of Tache Ave., 1·8 miles south of Chicoutimi Station, Que., protected to Board's satisfaction; present speed limitation of ten miles per hour to be maintained.

THE BOARD OF TRANSPORT COMMISSIONERS FOR CANADA

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Judgments, Orders, Regulations and Rulings

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Application of George F. Pettinos (Canada) Limited, of Hamilton, Ont., for an Order of the Board directing The New York Central Railroad Co., The Canadian Pacific Railway Company, The Canadian National Railways and The Toronto, Hamilton & Buffalo Railway Company to restore the description, sand (core), as previously published in their tariffs No. 3012, C.T.C. No. 60; C.D. No. 100, C.T.C. No. E-1680; E. No. 130, C.T.C. No. E-4670; and G.F.D. 882, C.T.C. No. 1758.

(File No. 25705.16)

Mr. GEORGE F. PETTINOS appeared for the Applicant;
Mr. W. R. BARNES for William R. Barnes Limited;
Mr. A. K. DYSART for the Canadian National Railways;
Mr. K. D. M. SPENCE for the Canadian Pacific Railway Company; and
Mr. W. M. MATTHEWS for the Canadian Freight Association.

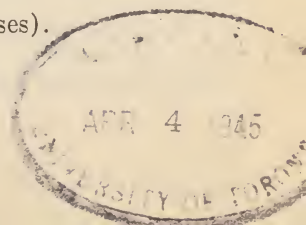
JUDGMENT

WARDROPE, ASSISTANT CHIEF COMMISSIONER:

Effective October 1, 1944, the railways in Eastern Canada amended their tariffs publishing mileage scales of rates on various types of sand, gravel, etc., moving between points in Eastern Canada. The commodity descriptions, prior thereto, were as follows:—

SCALE B

Gravel, in bulk in open top cars.
Sand, building.
Sand, core.
Stone, crushed, in bulk, in open top cars.
Stone, screenings, in bulk, in open top cars.
Gravel, or Sand, screened (for filtration purposes).
Shale, crushed (in bulk, in open top cars).



SCALE C

Sand, moulding.
 Sand, silica.
 Gravel, silica.

Effective on said date, the commodity descriptions were changed to read:—

SCALE B

Gravel, in bulk in open top cars.
 Sand, other than ground or pulverized or naturally or otherwise bonded (see Note), in open top cars without tarpaulin or other protective covering.
 Shale, crushed, in bulk in open top cars.
 Stone, crushed, in bulk in open top cars.
 Stone, screenings, in bulk in open top cars.
 NOTE:—Sand containing not more than 5 per cent clay content will be accepted as other than naturally or otherwise bonded sand.

SCALE C

Gravel, silica.
 Gravel, screened (for filtration purposes).
 Sand, in closed or in open top cars with tarpaulin or other protective covering.
 Sand, naturally or otherwise bonded, in open top or closed cars.

There was no change in the rates in Scale B. The rates in Scale C were substantially reduced, and are now the following differences over Scale B rates,—for distances up to 15 miles, 15 cents per net ton; over 15 miles and up to 1,000 miles, 25 cents per net ton; over 1,000 miles, 30 cents per net ton. Many specific commodity rates are published on a lower basis than the rates in these mileage scales.

The railways pointed out, amongst other things, that in the tariff description, prior to October 1, 1944, core sand was under Scale B and moulding sand under Scale C; that they had found some shippers describing their shipments as core sand while others were describing the same grade of sand as moulding sand resulting in confusion and discrimination. After careful consideration, the railways decided to change the description, drawing the line between bonded and unbonded sand which they felt would enable shippers and consignees, who are familiar with the type of sand they are handling, to readily determine the proper category under which the sand should be described and that the railways might obtain from all shippers alike rates based on the actual type of sand shipped.

The Board received many letters from shippers and consignees (the latter all operating foundries) all dealing solely with the rates on core and moulding sand. In some of these communications suspension of the tariff changes was requested and in others there was a general objection made to any change that would in any way increase any rates. Upon consideration of these submissions, the Board advised the parties that while the tariff revision might involve increased rates on certain traffic which, by reason of its description by shippers, has heretofore been handled at lower rates, it did not follow that there is anything unlawful with respect to the tariff revision or that the rates resulting therefrom are in themselves unreasonable or unjustly discriminatory. They were informed that nothing had yet been placed before the Board which was considered sufficiently definite or conclusive to justify a finding that the tariff revision was unreasonable or unjustly discriminatory or to make out a prima facie case warranting suspension of the tariff changes. The Board's rules

covering procedure to be followed in proceedings before the Board were explained in order that, if desired, a proper application might be made in accordance therewith.

Thereafter, under date of October 20, 1944, the Board received an application from George F. Pettinos (Canada) Limited, Hamilton, Ont., for an Order directing the railways to restore the description, core sand, as previously published in their tariffs. Following written answer to the application by the Canadian Freight Association on behalf of the railway companies, under date of November 24, 1944, the parties were advised that the matter would be set down for hearing and it was heard in the City of Toronto on January 17, 18 and 19, 1945. Mr. William R. Barnes, President of William R. Barnes Company Limited, Hamilton, Ont., appeared at the hearing and requested and was granted permission to be made a party complainant.

While the application is for restoration of the former description, core sand, in the tariffs, Mr. Pettinos stated the application was so worded to bring the case before the Board; that he did not consider going back to the old descriptions is the real answer. The following discussion on this point took place at Pages 247-8 of the evidence:—

“Mr. DYSART: You suggested to the Board that, rather than retain the existing descriptions, there should be a reversion to the old?”

Mr. PETTINOS: That was merely to bring the case up and try to arrive at a workable arrangement because this is not workable at the present time. I can see where the old descriptions were not really what the railroads, shippers or consignees want, either.

Mr. DYSART: As a matter of fact, the application which you now have before the Board, is for the restoration of the old descriptions?

Mr. PETTINOS: Yes, in order to get the subject up.

Mr. DYSART: Would you say, under those circumstances, and in the light of your application, the definition or meaning of core sand as it was in the old tariff is a more accurate designation for description purposes than the present bonded or unbonded sand?

Mr. PETTINOS: No, I would not, because it is not fair to the railroads where everything moved on the core sand rates.

The CHIEF COMMISSIONER: Q. Your main point in suggesting that the tariff revert back to what it was is because of the increased rates resulting from the present tariff?

A. That is right.

Q. Not that the classification of the product is solved by getting back to the old description?

According to the record before us the production of moulding sand in Canada in 1942 was 35,807 tons, of which 33,349 tons were produced in Ontario. The consumption of moulding sand in Canada in 1942 was 127,659 tons so that in that year 91,852 tons of moulding sand were imported into Canada. The principal United States origins of this sand moving to points in Eastern Canada were the States of Illinois, New York, New Jersey and the New England States. Sand is sold F.O.B. shipping point so that the consignees pay the transportation charges. At the present time, generally speaking, this large importation of sand from the United States to points in Eastern Canada moves under through rates and the commodity descriptions published in tariffs issued by the originating United States railways which are not here in issue.

Before the war, the Applicant transported sand from New York and New Jersey points by barge to docks at Fort Erie, Ont., and shipped it from the latter point to various destinations in Eastern Canada as core sand under the rates in

the tariffs of the Eastern Canadian railways which are here in question. There has been no sand moving in this way for two or three years past because barges are not available at present but Applicant expects to resume this method of transportation after the war. At present, therefore, the sand in which the Applicant is interested—except possibly for an isolated reshipment—is not affected by the change made in the tariffs in October last; further, the Applicant does not pay the transportation costs, these being borne by the receivers of the traffic. Applicant stated: “we have no reason to be in this case, other than as a service to our customers.”

A resume of the evidence concerning the character and use of sand employed by the foundries in making castings is as follows: core sand is generally used to form the internal portion of a casting; moulding sand is used for the exterior. There are green sand cores and dry sand cores. If the interior portion of a casting is of intricate design, a dry sand core is used while a green sand core may be used where the pattern may be made and drawn from the mould as, for example, in the case of a bathtub. Core sand connotes a sand suitable for making cores and usually containing very little clay substance and is synonymous with the term unbonded sand. Moulding sand signifies a sand used in moulding which contains an appreciable percentage of bonding or clay substance and is also described as bonded sand. Under present foundry practices, in many instances the same sand, when low in bond content, is used for both purposes (core and mould) by mixing with the sand at the foundry synthetic or artificial bond mixtures to produce the required result or bond; in other words, what is described as core and moulding sand or unbonded and bonded sand may in many cases be used interchangeably in the foundry.

The railways' evidence with regard to the revision of the commodity descriptions in their tariffs may be briefly summarized. For a great many years the description in the tariffs was simply “sand” without any segregation as to variety or type. In 1911 the description was changed providing for sand, building or core, at the previous mileage rates with a higher scale of mileage rates for moulding sand. This was done because moulding sand was of considerably higher value than building sand, although at that time core sand was of appreciably lower value than moulding sand and it was considered could be put in the same category for rate making purposes as the building sand. Many years ago, owing to the lack of refinement which now exists, considerable rather coarse core sand was used. These descriptions were carried in the tariffs until October 1st, 1944. The matter had been under consideration for a considerable time. Amongst other things, it was found that practically all the traffic was being described as core sand and the provision for moulding sand was largely a “paper” rate which appeared, in part at least, due to the looseness in the phraseology in the tariffs. It was, therefore, felt that the terms core and moulding sand under present foundry practices did not convey a proper designation; that those terms may have been all right at the time they were devised but so many changes have taken place, particularly in the use of synthetic bonding mixtures, that they to-day give a different impression than they did originally. The lower scale of rates and the commodity description in connection therewith were designed to cover the cheaper grades of core sand and were never intended to apply on the more valuable high grade processed unbonded sand nor on the more valuable moulding sand. In incorporating the present descriptions in their tariffs the railways felt they were making a proper distinction between the low and high priced sands. It also appears that they were influenced in the adoption of these descriptions by the descriptions carried in tariffs of a number of United States railways, although those in the Canadian tariffs vary therefrom with respect to the note concerning sand with a clay content of not more than 5 per cent being accepted as unbonded sand.

Applicant filed a number of exhibits showing prices of bonded and unbonded sands for foundry use. The prices shown below, as taken from these exhibits, are typical:—

	Prices per net ton F.O.B. shipping points	
	Open cars	Box Cars
South Jersey bonded sands		
Millville	\$1 55	\$1 65
Grenloch	1 55	1 65
Lumberton	1 40	1 50
Cupola Daub	2 35	2 45
Albany sands, bonded		
All grades	2 00	2 00
South Jersey washed and unbonded sands		
Coarse washed silica sands, damp	1 30	1 40
Fine washed silica sands, damp	1 45	1 55
Unwashed silica sands	1 20	1 30
New England sands, unbonded		
Providence River sand	2 25	2 35
Wareham sand	1 60	1 70
Provincetown sand	1 20	1 30
East Sandwich sand	1 40	1 50

The foregoing are the summer prices for 1944. The winter prices, effective December 1, 1944, were higher by the following amounts:—

	Cents per net ton
South Jersey bonded sands.....	40
Albany bonded sands.....	50
South Jersey washed and unbonded sands.....	10 to 20
New England sands, unbonded.....	10 to 20

These sands, or some of them, are those which were formerly shipped from Fort Erie as core sand under the Canadian tariffs when barge service was available as earlier referred to herein. At the present time they are moving all rail under through rates and descriptions in tariffs published by the United States railways.

Mr. Barnes appeared for the William R. Barnes Company Limited, Hamilton, Ont. This company has sand deposits near Waterdown, Ont., and the sand it ships is for foundry use. He stated when they commenced operations there they found there were rates on core sand and moulding sand rates; they found that practically all foundry sand in Ontario was being shipped on the core sand rate, this being due to the fact that moulding sand and core sand seemed to be interchangeable in the foundry, consequently, they shipped their foundry sand on the core sand rates. All grades of their sand are sold at \$1.95 per net ton F.O.B. car in Waterdown North. Since the amendment to the tariffs the shipments have been made under the Scale C rates which represented an increase in the transportation cost to the foundries. He stated they would like the old rates in effect.

The only other prices placed upon the record were as to foundry sand shipped from Sherks, Ont., stated to be valued at 80 cents per net ton and sand from Port Crescent, Mich., moving by water to Toronto and shipped by rail from Toronto to foundries in Ontario at a price stated to be \$2.30 per net ton F.O.B. cars at Toronto.

Mr. Pettinos stated that their evidence and exhibits showed that the unbonded and bonded sand are approximately of the same average value, are interchangeable in many cases in their use in the foundries, competitive in use and price, and whatever level of rates applied to one sand should apply to the other. He suggested that they be termed foundry sand which would eliminate the difficulty in properly ascertaining whether the sand is bonded, or not, and subject to the note pertaining to the 5 per cent line of demarcation. At page 414 of the evidence he stated:—

“in order to make the cleanest cut distinction between the grades of sand with relation to their price, there is no way which will give you a clearer

separation as to the value of sands than the type of equipment those sands use. We have seen from the exhibits that the selling prices on so-called core or moulding or so-called bonded or unbonded sand, widely overlap each other. I believe a study by the railroads and by the Commission will definitely prove that, if two rates are necessary on sand, and if those rates are separated by box cars versus open cars, you will find your greatest difficulty has gone. In that way the railroads will be more nearly assured of collecting the higher rate on the more valuable commodity."

The foregoing suggestion would not accomplish its stated purpose for the reason that the evidence shows that:—

(1) The spread in price between sand loaded in open cars and in box cars is only 10 cents per ton for the Jersey and New England sands and is the same price in both open and box cars in the case of the Albany sand.

(2) It would result in a higher rate on sand loaded in box cars at prices \$1.30, \$1.40 and \$1.50 per ton than on sand loaded in open cars at prices from \$1.55 to \$2.35 per ton.

(3) Practically the entire movement of sand from Ontario points is in open cars so that the provision for a higher rate level on sand in box cars would be a vacuous act.

What does emerge very clearly from all that was placed upon the record is that the present tariff descriptions do not accomplish their object of providing for a somewhat higher rate level on all the higher priced sand than that designed to apply on the relatively low valued sand. The information furnished with regard to the value of the lower priced sand was of a very general character and is contained in Exhibit 47 which shows the production of sand and gravel in Canada and value for the years 1939 to 1942. For the year 1942, the figures are:—

Sand	Value per ton
Moulding Sand	\$1 17
For building, concrete, roads, etc	37
Other	29
Sand and Gravel	
For Railway ballast	21
For concrete roads, etc.	37
For mine filling	18
Crushed gravel	42
Totals, Sand and Gravel	34

It is not indicated just what the figures as to value represent or whether the prices F.O.B. cars at shipping point would be some other figure.

The term building sand as carried in the tariffs for so many years appears to have been well understood and no difficulty in tariff interpretation experienced with respect thereto. There was confusion between the terms core sand and moulding sand. I believe the term foundry sand might well be substituted without any difficulty in tariff interpretation. I would, therefore, direct that the following descriptions be substituted for those now in the tariffs:—

SCALE B

Gravel, in bulk in open top cars.
 Sand, building.
 Shale, crushed, in bulk in open top cars.
 Stone, crushed, in bulk in open top cars.
 Stone, screenings, in bulk in open top cars.

SCALE C

Sand, foundry.
 Sand, or Gravel, silica.
 Sand or Gravel, screened (for filtration purposes).

Considerable evidence of a technical character was given by Applicant and witnesses J. W. Eller and Robert Job with regard to the character and use of sand for foundry purposes, also dealing with the present tariff descriptions, particularly the note concerning 5 per cent clay content. It was very helpful to an intelligent understanding of the issues involved but in view of the disposition made does not require further comment here.

There was practically no evidence directed to the reasonableness of the rates of these mileage scales and extended comment thereon appears unnecessary. With respect to Scale B rates, it is the lowest of some dozen mileage scales published in the railway companies' building material tariffs. Gravel and crushed stone are commodities covered by this scale, the rates on which have been before the Board in numerous cases. There are also many specific commodity rates published, which are lower than the scale, and were established under a wide variety of circumstances and conditions. The core sand rates covered by Applicant's Exhibit 8 fall under this category having been established to meet competitive situations. The Board has held that it would not be justified in directing an extension to points not supplied with commodity rates of rates on a lower basis on crushed stone than the mileage scale. On the commodities covered by Scale C, having a price range very appreciably higher than the commodities covered by Scale B, a higher rate scale is justified, but instead of the present differences over Scale B, namely up to 15 miles, 15 cents per net ton; over 15 and up to 1,000 miles, 25 cents per net ton, and over 1,000 miles, 30 cents per net ton, I consider a flat spread of three-quarter cent per 100 pounds or 15 cents per net ton over Scale B throughout the scale would be reasonable and would so direct.

We were not given very much information concerning the movements of foundry sand originating at points in Eastern Canada. There may be some movements of foundry sand which is of a price range considerably below what is above set out as being shipped from Fort Erie, Waterdown North and Toronto and which would more nearly approximate the price range of the commodities covered by Scale B. The sand from Sherks appears to be in this category. In these cases specific commodity rates should be established below Scale C rates and which as a maximum should not exceed Scale B rates.

Ottawa, February 28th, 1945.

HUGH WARDROPE.

I concur:

J. A. CROSS.

FRANK MACPHERSON.

ORDER No. 65793

In the matter of the application of George F. Pettinos (Canada) Limited, of Hamilton, Ontario, for an Order directing the New York Central Railroad Company, the Canadian Pacific Railway Company, the Canadian National Railways, and The Toronto, Hamilton and Buffalo Railway Company to restore the description sand (core), as previously published in their Tariffs C.T.C. No. 60, C.T.C. No. E.1680, C.T.C. No. E.4670, and C.T.C. No. 1758:

File No. 25705.16

MONDAY, the 5th day of March, A.D. 1945.

J. A. CROSS, K.C., *Chief Commissioner.*

HUGH WARDROPE, *Assistant Chief Commissioner.*

F. M. MACPHERSON, *Commissioner.*

Upon hearing the application at the sittings of the Board held at Toronto, Ontario, on January 17th, 18th and 19th, 1945, in the presence of Counsel for and representatives of the Applicant, Wm. R. Barnes Company, Ltd., Canadian National Railways, the Canadian Pacific Railway Company and the Canadian Freight Association, and what was alleged—

It is ordered:

1. That in Canadian National Railways Tariffs C.T.C. No. E.1680, Item 1420, and C.T.C. No. E.3885, Item 2010; in Canadian Pacific Railway Tariffs C.T.C. No. E.4670, Item 6, and C.T.C. No. E.4757, Item 8; in New York Central Railroad Company Tariff C.T.C. No. 60, Item 1780-A (Supplement No. 60); and in Toronto, Hamilton and Buffalo Railway Company Tariff C.T.C. No. 1758, Item 10, the commodity description of said items be changed to read:

Gravel, in bulk in open top cars
Sand, building
Shale, crushed, in bulk in open top cars
Stone, crushed, in bulk in open top cars
Stone, screenings, in bulk in open top cars.

2. That in Canadian National Railways' Tariffs C.T.C. No. E.1680, Item 1430, and C.T.C. No. E.3885, Item 2020; in Canadian Pacific Railway Company Tariffs C.T.C. No. E.4670, Item 8, and C.T.C. No. E.4757, Item 9; in New York Central Railroad Company Tariff C.T.C. No. 60, Item 1790-A (Supplement No. 60); and in Toronto, Hamilton and Buffalo Railway Company Tariff C.T.C. No. 1758, Item 15, the commodity description of said items be changed to read:

Sand, foundry
Sand or gravel, silica
Sand or gravel, screened (for filtration purposes).

3. That the mileage scale of rates applicable with respect to the tariff items named in Section 2 hereof be revised on basis of three-quarters cent per 100 pounds throughout the scale over the mileage scale of rates governing the tariff items named in Section 1 hereof.

4. That, with respect to foundry sand, more nearly approximate the price range of the commodities named in the items covered by Section 1 hereof, specific commodity rates be established which, as a maximum, shall not exceed the mileage scale of rates applicable with respect to the said commodities.

J. A. CROSS,
Chief Commissioner.

ORDER NO. 65791

In the matter of the application of the Canadian Pacific Railway Company, hereinafter called the "Applicant Company," for permission to amend its Tariff C.T.C. No. E.4595 on short notice: File No. 27612.292

TUESDAY, the 6th day of March, A.D. 1945.

J. A. CROSS, K.C., *Chief Commissioner.*

HUGH WARDROPE, *Assistant Chief Commissioner.*

J. A. STONEMAN, *Commissioner.*

Whereas the Applicant Company published, effective March 5, 1945, in item 2040 of its Tariff C.T.C. No. E.4595 a rate of 20 cents per ton of 2,000 pounds on copper, nickel ore from Clara Belle, Ontario, to Coniston, Ontario, but through oversight, neglected to show appropriate reference that this was a "proportional rate, applicable on Frood Ore delivered by the International Nickel Company to the Canadian Pacific Railway in cars at Clara Belle, Ont.;"

And whereas the Applicant Company advises that it was agreed with the shippers when this rate was negotiated that the rate, when published, would carry the said reference—

It is ordered: That the Applicant Company be, and it is hereby, permitted to amend its Tariff C.T.C. No. E.4595 by publishing the aforesaid reference effective on one day's notice.

J. A. CROSS,

Chief Commissioner.

ORDER No. 65801

In the matter of the application of Upper Lakes and St. Lawrence Transportation Co. Limited, hereinafter called the "Applicant," for a licence under Section 10 of The Transport Act, 1938: File No. 42076.22

TUESDAY, the 6th day of March, A.D. 1945.

J. A. CROSS, K.C., *Chief Commissioner.*

HUGH WARDROPE, *Assistant Chief Commissioner.*

G. A. STONE, *Commissioner.*

F. M. MACPHERSON, *Commissioner.*

Upon the report and recommendation of the Assistant Director, Traffic Department of the Board—

It is ordered: That Licence Number C.T.C. (W.T.) 121 be issued to the Applicant for the period of one year commencing on the 15th day of January, 1945, licensing the following ships:—

Vessel Name	Official Registry No.	Gross Tonnage
<i>Brown Beaver</i>	160721	1,892
<i>Charles R. Huntley</i>	148898	1,760
<i>Grey Beaver</i>	160722	1,892
<i>James Stewart</i>	148901	1,760
<i>John S. Pillsbury</i>	149071	1,754
<i>Judge Kenefick</i>	148430	1,745
<i>Ralph Budd</i>	154862	4,537
<i>Shelton Weed</i>	148453	1,745

to transport goods by water between all ports or places in Canada on Lakes Ontario, Erie, Huron (including Georgian Bay), and Superior, and their connecting waters, including the St. Lawrence River and its tributaries as far seaward as the west end of the Island of Orleans.

J. A. CROSS,

Chief Commissioner.

ORDER No. 65807

In the matter of Agreed Charge between the Canadian National Railways, Canadian Pacific Railway Company, Northern Alberta Railways Company and certain shippers covering transportation of lumber and forest products between stations in Western Canada specified therein, approved by Order No. 59787, dated October 18, 1940:

File No. 40994.13

FRIDAY, the 9th day of March, A.D. 1945.

J. A. CROSS, K.C., *Chief Commissioner.*

HUGH WARDROPE, *Assistant Chief Commissioner.*

J. A. STONEMAN, *Commissioner.*

G. A. STONE, *Commissioner.*

F. M. MACPHERSON, *Commissioner.*

Whereas Norman Gillies, of Hudson Bay Junction, Saskatchewan, has made application under subsection (6) of Section 35 of The Transport Act, 1938, and represented to the Board that his business will be unjustly discriminated against unless a similar charge be fixed for the transport of his lumber and forest products, and has expressed his willingness to meet and comply with the provisions and conditions of the said Agreed Charge—

It is ordered: That the agreed charges approved by the said Order No. 59787, dated October 18, 1940, be, and they are hereby, fixed for the transport by the said railways of lumber and forest products, as described in paragraph B of the said Agreed Charge, for Norman Gillies from Otosquen, Saskatchewan, to the stations referred to in paragraph C (2) of the said Agreed Charge, subject to and upon the terms and conditions contained in the said Agreed Charge; and the Board hereby appoints the date of this Order as the date on which the said charges fixed as aforesaid are to come into operation.

J. A. CROSS,

Chief Commissioner.

GENERAL ORDER No. 670

In the matter of the application of The Railway Association of Canada for an Order amending the Regulations for the Transportation of Explosives and Other Dangerous Articles by Freight which were approved by General Order No. 598, dated October 11, 1940, as amended:

File No. 1717

SATURDAY, the 3rd day of March, A.D. 1945.

J. A. CROSS, K.C., *Chief Commissioner.*
 HUGH WARDROPE, *Asst. Chief Commissioner.*
 J. A. STONEMAN, *Commissioner.*
 G. A. STONE, *Commissioner.*
 F. M. MacPHERSON, *Commissioner.*

Upon reading the submissions filed; and upon the report and recommendation of the Director of Operation of the Board—

IT IS ORDERED

1. That the following General Orders of the Board made herein be, and they are hereby, rescinded:—

General Order No.	601,	dated February 27, 1941
"	"	613, dated January 19, 1942
"	"	615, dated February 20, 1942
"	"	621, dated April 11, 1942
"	"	624, dated July 7, 1942
"	"	630, dated October 14, 1942
"	"	633, dated November 23, 1942
"	"	645, dated May 28, 1943
"	"	646, dated May 28, 1943
"	"	651, dated August 26, 1943
"	"	653, dated October 7, 1943
"	"	654, dated November 3, 1943
"	"	665, dated October 17, 1944.

2. That the said Regulations for the Transportation of Explosives and Other Dangerous Articles by Freight be, and they are hereby, amended in accordance with amendments in Supplement No. 2 thereof, marked "A," on file with the Board under file No. 1717, Part 12, and certified by the Secretary of the Board.

J. A. CROSS,
Chief Commissioner,

Re DEMURRAGE PENALTIES ASSESSED BY THE CANADIAN
DEMURRAGE BUREAU UNDER GENERAL ORDERS 201 and 349

The following tables present in summarized form the reports of the Canadian Car Demurrage Bureau covering car demurrage assessed for the year 1944.

NOTE.—First two days over free time, \$1 per day, three days or more, \$5 per day.

EASTERN CANADA

1944	Total cars handled	Number released within free time	Per cent	Number held over free time	Per cent	Number held under 3 days over free time	Per cent	Number held 3 days or more over free time	Per cent
Jan.....	247,822	221,064	89.20	26,758	10.80	18,489	7.46	8,269	3.34
Feb.....	244,640	218,389	89.27	26,251	10.73	18,144	7.42	8,107	3.31
Mar.....	270,007	244,141	90.42	25,866	9.58	18,400	6.81	7,466	2.77
April.....	245,154	222,065	90.58	23,089	9.42	16,413	6.70	6,676	2.72
May.....	256,928	233,008	90.69	23,920	9.31	17,548	6.83	6,372	2.48
June.....	261,702	234,662	89.67	27,040	10.33	19,286	7.37	7,754	2.96
July.....	262,930	236,238	89.85	26,692	10.15	18,436	7.01	8,256	3.14
Aug.....	272,925	244,418	89.56	28,507	10.44	20,230	7.41	8,277	3.03
Sept.....	270,982	243,976	90.03	27,006	9.97	19,272	7.12	7,734	2.85
Oct.....	276,416	247,696	89.61	28,720	10.39	20,744	7.50	7,976	2.89
Nov.....	269,943	241,784	89.57	28,159	10.43	20,137	7.46	8,022	2.97
Dec.....	237,937	211,840	89.03	26,097	10.97	18,401	7.73	7,696	3.24
TOTAL.....	3,117,386	2,799,281		318,105		225,500		92,605	
MONTHLY AVERAGE..	259,782	233,273	89.80	26,509	10.20	18,792	7.23	7,717	2.97

WESTERN CANADA

Jan.....	111,959	105,062	93.84	6,897	6.16	5,295	4.73	1,602	1.43
Feb.....	113,837	106,517	93.57	7,320	6.43	5,720	5.02	1,600	1.41
Mar.....	120,223	112,781	93.81	7,442	6.19	5,227	4.35	2,215	1.84
April.....	112,573	106,167	94.31	6,406	5.69	4,545	4.04	1,861	1.65
May.....	124,551	117,177	94.08	7,374	5.92	5,417	4.35	1,957	1.57
June.....	115,403	109,286	94.70	6,117	5.30	4,703	4.08	1,414	1.22
July.....	117,023	110,106	94.09	6,917	5.91	5,140	4.39	1,777	1.52
Aug.....	121,401	114,808	94.57	6,593	5.43	5,007	4.12	1,586	1.31
Sept.....	123,161	115,057	93.42	8,104	6.58	6,052	4.91	2,052	1.67
Oct.....	139,949	132,559	94.72	7,390	5.28	5,803	4.15	1,587	1.13
Nov.....	134,317	126,781	94.39	7,536	5.61	6,076	4.52	1,460	1.09
Dec.....	121,711	114,152	93.79	7,559	6.21	5,969	4.90	1,590	1.31
TOTAL.....	1,456,108	1,370,453		85,655		64,954		20,701	
MONTHLY AVERAGE..	121,342	114,204	94.12	7,138	5.88	5,413	4.46	1,725	1.42

OTTAWA, March 7, 1945.

P. F. BAILLARGEON,
Secretary, B.T.C.

SUMMARY OF ORDERS ISSUED BY THE BOARD

- 65782 Mar. 2—Declaring C.P.R. crossing of Highway No. 47 second east of station at Killaly, Sask. protected to Board's satisfaction.
- 65783 Mar. 2—Declaring C.P.R. crossing 1.29 miles west of Beachville, Ont., protected to Board's satisfaction.
- 65784 Mar. 2—Authorizing C.P.R. to use and operate bridge across Rivière au Chiens, at mileage 19.7 Park Avenue Subd., P.Q.
- 65785 Feb. 27—Directing C.N.R. to construct culverts on their railway at each end of bridge over Ste. Anne River, Parish of St. Raymond, Que.
- 65786 Mar. 2—Authorized C.N.R. to render draw span fixed at bridge over Mersey River at Liverpool, N.S.
- 65787 Mar. 2—Declaring New York Central Railroad crossing of Springford Road third east of Tillsonburg, Ont., protected to Board's satisfaction.
- 65788 Mar. 3—Declaring C.N.R. crossing of Montcalm Street, seventh from Chicoutimi Station, Que., protected to Board's satisfaction; present speed limitation of 10 m.p.h. to be maintained.
- 65789 Mar. 3—Declaring C.N.R. crossing of Crompton Road fifth west of St. Catharines, Ont., protected to Board's satisfaction.
- 65790 Mar. 5—Declaring Dominion Atlantic Railway crossing of highway first west of Cambridge Station, N.S., protected to Board's satisfaction.
- 65791 Mar. 6—Authorizing C.P.R. to amend its Tariff C.T.C. No. E.4595 on short notice.
- 65792 Mar. 3—Authorizing C.P.R. to construct branch line of railway to serve Alberta Seed Growers Association, Ltd., in the Town of Camrose, Alta.
- 65793 Mar. 5—Authorizing New York Central Railroad Co., C.P.R., C.N.R. and The Toronto, Hamilton & Buffalo Railway Co. to restore the description sand (core), as previously published in their tariffs.
- 65794 Mar. 5—Approving location of pipe lines, etc., of North Star Oil Ltd. near tracks of C.P.R. at Constance, Sask.
- 65795 Mar. 5—Approving location of pipe lines, etc., of Prince Albert and District Co-operative Association, Ltd., near C.N.R. tracks at Prince Albert, Sask.
- 65796 Mar. 5—Declaring C.N.R. crossing of Archibald Street first east of station at St. Boniface, Man., protected to Board's satisfaction; speed limitation of 10 miles per hour to be maintained.
- 65797 Mar. 5—Approving clearances of thaw shed located on branch lines serving the Consolidated Mining and Smelting Company of Canada Ltd., Kootenay District, B.C. (C.P.R.).
- 65798 Mar. 6—Declaring C.N.R. crossing first north of l'Afrique Station, P.Q., protected to Board's satisfaction.
- 65799 Mar. 6—Declaring C.N.R. crossing second south of station at Fort William, Ont., protected to Board's satisfaction; present speed limitation of ten miles per hour to be maintained.
- 65800 Mar. 6—Approving location of pipe lines, etc., of McColl-Frontenac Oil Co. Ltd., near tracks of C.N.R. at Exeter, Ont.
- 65801 Mar. 6—Authorizing issuing of Licence No. C.T.C. (W.T.) 121 to Upper Lakes and St. Lawrence Transportation Co. Ltd.
- 65802 Mar. 7—Declaring Esquimalt & Nanaimo Railway crossing first west of Alberni Station, B.C., protected to Board's satisfaction; present speed limitation of ten miles per hour to be maintained.
- 65803 Mar. 7—Declaring New York Central crossing of Queen Street in Town of Petrolia, Ont., protected to Board's satisfaction; present speed limitation of ten miles per hour to be maintained.
- 65804 Mar. 7—Authorizing C.N.R. to change present semaphore home signals on tracks of Montreal Tramways Co. to light signals.
- 65805 Mar. 9—Approving tolls published to tariffs filed by C.N.R. under Section 3 of the Maritime Freight Rates Act.
- 65806 Mar. 9—Declaring C.P.R. crossing first east of Plantagenet Station, Ont., protected to Board's satisfaction.
- 65807 Mar. 9—Approving Agreed Charge covering transportation of lumber and forest products for Norman Gillies, Osoques, Sask.
- 65808 Mar. 10—Approving revised Appendix "A", to agreement between The Bell Telephone Co. of Canada and the Lambton Telephone Co.

- 65S09 Mar. 10—Approving location of pipe lines, etc., of North Star Oil Ltd., near tracks of C.N.R. at Lucky Lake, Sask.
- 65S10 Mar. 10—Authorizing C.P.R. to construct branch line of railway to serve the Sartoris Lumber Co. at mileage 89·54 Crowsnest Subd., near Blairmore, Alta.
- 65S11 Mar. 10—Declaring Grand River Railway crossing of Courtland Ave., in the City of Kitchener, Ont., protected to Board's satisfaction; present speed limitation of ten miles per hour to be maintained.
- 65S12 Mar. 12—Approving under Maritime Freight Rates Act tolls published in tariffs filed by C.P.R. under Sec. 9.
- 65S13 Mar. 12—Approving location of pipe lines, etc., of North Star Oil Ltd. near C.N.R. tracks at Swan River, Man.
- 65S14 Mar. 12—Approving location of pipe lines, etc., of North Star Oil Ltd. near C.P.R. tracks at Indian Head, Sask.
- 65S15 Mar. 10—Authorizing C.N.Rys. and Imperial Oil Limited to operate their trains through interlocking plant at crossing of their tracks at Montreal East, Que.
- 65S16 Mar. 10—Authorizing C.P.R. to carry out changes to interlocking plant at crossing of its railway and the Pere Marquette Railway Co. at Walkerville Junction, Ont.
- 65S17 Mar. 12—Amending Order No. 65774, dated February 26, 1945, *re* fencing on C.N.Rys.' Newmarket Subdivision, Ont.
- 65S18 Mar. 12—Approving under Maritime Freight Rates Act tolls published in tariffs filed by Dominion Atlantic Railway Co. under Section 9.

NOTICES, ORDERS IN COUNCIL, ETC.

The following Orders in Council are reproduced for the information of all concerned:—

P.C. 1484

AT THE GOVERNMENT HOUSE AT OTTAWA

TUESDAY, the 6th day of March, 1945.

PRESENT:

HIS EXCELLENCY THE GOVERNOR GENERAL IN COUNCIL:

Whereas by Order in Council, P.C. 1865, of March 17, 1944, passed under the provisions of Subsection 2 of Section 12 of The Transport Act, 1938, the S.S. *Casco* of the Lakes and St. Lawrence Navigation Company, Limited, was exempted from the operation of Part II of the said Act, relative to Transport by Water, for the season of Navigation of 1944, only, when engaged in the carriage of package freight for The Canada Starch Company, Limited, or the Canada Starch Sales Company, Limited;

And whereas the Minister of Transport reports that, under date of February 14, 1945, the Board of Transport Commissioners for Canada advised that it is in receipt of a letter from the Lakes and St. Lawrence Navigation Company, Limited, setting out that the same conditions will exist this year as formerly and, in such circumstances, the Board recommends that the exemption in respect of the said ship be continued for the season of navigation of 1945;

Therefore, His Excellency the Governor General in Council, on the recommendation of the Minister of Transport, is pleased to order that the S.S. *Casco* of the Lakes and St. Lawrence Navigation Company, Limited, be and it is hereby exempted from the operation of Part II of the Transport Act, 1938, for the season of navigation of 1945, only, when engaged in the carriage of package freight for The Canada Starch Company, Limited, or the Canada Starch Sales Company, Limited.

A. D. P. HEENEY,

Clerk of the Privy Council.

P.C. 1485

AT THE GOVERNMENT HOUSE AT OTTAWA

TUESDAY, the 6th day of March, 1945.

PRESENT:

HIS EXCELLENCY THE GOVERNOR GENERAL IN COUNCIL:

Whereas by Order in Council, P.C. 1867, of March 17, 1944, passed under the provisions of Subsection 2 of Section 12 of The Transport Act, 1938, the steamships *Shelterbay*, *New York News*, *Outarde* and *Heron Bay* and the motorships *Chicago Tribune* and *Franquelin* of the Quebec and Ontario Transportation Company, Limited, were exempted from the operation of Part II of the said Act, relative to Transport by Water, for the season of navigation of 1944, only, when engaged in the carriage of package freight for the Ontario Paper Company, Limited, of which the Transportation Company is a wholly-owned subsidiary, and for the Quebec North Shore Paper Company, operating on the north shore of the St. Lawrence River, for whom the Company's vessels carry supplies under the same conditions as for the Ontario Paper Company;

And whereas the Minister of Transport reports that, under date of February 14, 1945, the Board of Transport Commissioners for Canada advised that it is in receipt of a letter from this Company setting out that the same conditions will exist this year as are summarized in the said Order in Council, and, in the circumstances, the Board recommends that the exemption in respect of the ships, referred to, be continued for the season of navigation of 1945;

Therefore, His Excellency the Governor General in Council, on the recommendation of the Minister of Transport, is pleased to order that the ships of the Quebec and Ontario Transportation Company, Limited, as above mentioned, be and they are hereby exempted from the operation of Part II of the Transport Act, 1938, for the season of navigation of 1945, only, when engaged in the carriage of package freight for the Ontario Paper Company, Limited, and the Quebec North Shore Paper Company.

A. D. P. HEENEY,
Clerk of the Privy Council.

P.C. 1486

AT THE GOVERNMENT HOUSE AT OTTAWA

TUESDAY, the 6th day of March, 1945.

PRESENT:

HIS EXCELLENCY THE GOVERNOR GENERAL IN COUNCIL:

Whereas by Order in Council, P.C. 1864, of March 17, 1944, passed under the provisions of Subsection 2 of Section 12 of The Transport Act, 1938, the steamships *Cyclo-Brave*, *Cyclo-Chief* and *Cyclo-Warrior*, bulk tankers, which are controlled by McColl-Frontenac Oil Company, Limited, through complete stock ownership, and which are operated on the Great Lakes as in The Transport Act, 1938, defined, were exempted from the operation of Part II of the said Act, relative to Transport by Water, for the season of navigation of 1944, only, when engaged in the carriage of articles or package freight for McColl-Frontenac Oil Company, Limited;

And whereas the Minister of Transport reports that, under the date of February 16, 1945, the Board of Transport Commissioners for Canada advised that it is in receipt of a letter from the said Company, setting out that the same conditions will exist this year as are summarized in the said Order in Council, and, in the circumstances, the Board recommends that the exemption in respect of the ships, referred to, be continued for the season of navigation of 1945;

Therefore, His Excellency the Governor General in Council, on the recommendation of the Minister of Transport, is pleased to order that the steamships *Cyclo-Brave*, *Cyclo-Chief* and *Cyclo-Warrior* be and they are hereby exempted from the operation of Part II of The Transport Act, 1938, for the season of navigation of 1945, only, when engaged in the carriage of articles or package freight for the McColl-Frontenac Oil Company, Limited.

A. D. P. HEENEY,
Clerk of the Privy Council.

The Board of Transport Commissioners for Canada

Judgments, Orders, Regulations and Rulings

Vol. XXXV	Ottawa, April 16, 1945	No. 2
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This publication is issued fortnightly, on the 1st and 15th of each month. Annual subscription, \$3.00; single numbers, 20 cents; in quantities, 25 per cent discount. Remittances should be made to the King's Printer, Ottawa, by postal money order, express order or accepted cheque. The use of currency for this purpose is contrary to the advice of the postal authorities and entails a measure of risk. Postage stamps, foreign money or uncertified cheques will not be accepted. No extra charge is made for postage on documents forwarded to points in Canada and in the United States, but cost of postage is added to the selling price when documents are mailed to other countries. Early application should be made for copies in quantities. Subscriptions should be sent, in every case, to the King's Printer, Ottawa.

Application of Canadian National Railways for an Order rescinding Order No. 38473 of the Board, dated 27th November, 1926, made pursuant to the application of the Village and Parish of St. Raymond, in the County of Portneuf and Province of Quebec, for an Order directing the Canadian National Railways to construct culverts on their railway (Quebec and Lake St. John) at each end of the bridge over Ste. Anne River, in the said Parish of St. Raymond; and,
Review and reconsideration of said Order No. 38473, dated 27th November, 1926, and rehearing of said application of the Village and Parish of St. Raymond.
File No. 27152

Mr. C. V. DARVEAU, K.C., and Mr. A. K. DYSART appeared for the Canadian National Railways;
 Mr. VALMORE BIENVENUE, K.C., and Mr. JEAN LESAGE for the Village and Parish of St. Raymond; and
 Mr. J. O. MARTINEAU represented the Department of Roads of the Province of Quebec.
 Mr. ANDRE TASCHEREAU, K.C., and Mr. M. GAGNE attended for The News Pulp and Paper Company Limited, but took no part in the proceedings.
 Heard at the City of Quebec, on November 8, 9, 10, 15 and 16, 1944.

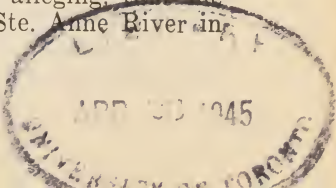
JUDGMENT

CROSS, *Chief Commissioner*,—

This is an application of Canadian National Railways, hereinafter referred to as the Railways, for an order rescinding Order No. 38473 of the Board, dated November 27, 1926, made pursuant to the application of the Village of St. Raymond and the Parish of St. Raymond, in the County of Portneuf and Province of Quebec, hereinafter sometimes referred to as the Municipalities, for an order directing the Railways to construct culverts on their railway (Quebec and Lake St. John) at each end of the bridge over Ste. Anne River, in the Parish of St. Raymond; and for a review and reconsideration of said Order No. 38473, dated November 27, 1926, and rehearing of said application of the Municipalities.

What is here involved is a matter of long standing. It would seem, therefore, desirable to state something of its history.

In June, 1925, the Municipalities applied to the Board alleging, that the Railways are the owners of a line of railway crossing over Ste. Anne River in



the limits of the Village and the Parish of St. Raymond; that over the river a bridge was erected, the piers of which are so near one another that they prevent the free flowing of the said river; that the approaches of the bridge constitute such a high dump that in case of a flood of the said river, the waters are blocked and prevented from flowing freely, by this dam; that when the water is high the said river causes considerable damage to the property owners located nearby and the said two Municipalities, starting from the bridge upwards; said damage being caused by the said bridge and the said dump preventing the free flowing of the water, and asked for an Order of the Board directing the Railways to do the work necessary to provide for the free passage of the waters of the said Ste. Anne River in case of an inundation and to erect, for instance, culverts having sufficient width on each side of the bridge, or any other work that may add to the free flowing of the water of said river.

The Board, by Order No. 38473, dated the 27th day of November, 1926, upon reading what was filed in support of the application of the Village and the Parish of St. Raymond and on behalf of the Railways, ordered "that the Canadian National Railways be, and they are hereby, directed to put in an opening in the east embankment at the said bridge over the Ste. Anne River, in the Parish of St. Raymond, County of Portneuf, and Province of Quebec, with a span about two hundred feet long, the bottom at about elevation 430."

The material which the Board had on file and which was before it when making said Order No. 38473, included, among other material, a report by Mr. C. L. Savary, C.E., an engineer of the Department of Lands and Forests, of the Province of Quebec, which report was concurred in by the Board's then Assistant Chief Engineer, Mr. H. A. K. Drury, dated October 17, 1925, and a report by Mr. Frederick B. Brown, principal of the firm of Messrs. Walter J. Francis & Company, Consulting Engineers of Montreal, dated May 20, 1926.

Upon receipt of a copy of said Order No. 38473, dated November 27, 1926, the Railways, by their General Solicitor, wrote the Board under date December 2, 1926, protesting against the terms of the order, and asked, under Section 51 of the Railway Act, that the matter be re-opened and the Railways given an opportunity of being heard by the Board in opposition to the application.

Following the said communication from the Railways to the Board of December 2, 1926, asking that the matter be re-opened, further inspections and investigations were made by the Board's engineers, and certain communications also took place between the Board and the Railways, and the Board and the Quebec Streams Commission relative to the question. In July, 1928, the Board received from the Quebec Streams Commission a copy of a report, dated July 13, 1928, made by Olivier Lefebvre, Esq., Chief Engineer of the Quebec Streams Commission, and addressed to the Honourable J. A. Tessier, Chairman of the said Commission. The said report was made in connection with the flood in the Ste. Anne de la Perade River, at St. Raymond, on September 30 and October 1, 1924, following a full investigation by Mr. Lefebvre in the summer of 1927, of the conditions in that section of the Ste. Anne River between the dam of the News Pulp and Paper Company, and the Village of St. Raymond.

It will be noted that the investigation and report of Mr. Olivier Lefebvre were made subsequent to the making of Board's Order No. 38473, dated November 27, 1926.

On July 10, 1930, the Railways filed with the Board a formal application, dated July 9, 1930, under Section 51 of the Railway Act, asking for a rehearing by the full Board of the application of the Village and the Parish of St. Raymond and for an order rescinding the above mentioned Order No. 38473 of the Board, dated 27th November, 1926.

The Board decided to grant the said request of the Railways for a rehearing, and by letter dated October 20, 1930, the Assistant General Counsel for the Railways was so advised. He was at the same time asked, after consulting with all the parties in interest, to suggest a convenient date for the rehearing. No date was ever suggested.

The application finally came on for hearing at a sitting of the Board, in the City of Quebec, on October 29, 1935, in the presence of counsel for the Municipalities and the Railways, when it was ordered that the operation of the Board's said Order No. 38473, dated November 27, 1926, "be suspended until the matter is reheard." On the suggestion of counsel for the Municipalities it was arranged that he confer with counsel for the Railways and agree upon a date for rehearing of the Municipalities' application on the merits, subject to the convenience of the Board. No such suggestion as to, or request for a date for the rehearing was made to the Board, by or on behalf of any of the interested parties.

The question here involved remained dormant until early in 1944, when an inquiry was received from the present solicitors of the Municipalities, asking as to the standing of the matter. As earlier indicated, the application of the Railways and the rehearing of the application of the Municipalities took place in the City of Quebec in November, 1944.

The railway line in question which runs through the Village and Parish of St. Raymond was formerly a part of the Quebec and Lake St. John Railway Company line which, prior to 1914, was a Provincial railway. By Chapter 53 of 1869, 32 Victoria, Statutes of Province of Quebec, provision was made for incorporation of the Quebec and Gosford Railway Company. In 1871 the name of the company was, by Chapter 24 of 34 Victoria, changed to the Quebec and Lake St. John Railway Company. Certain amendments were subsequently made to these Acts by the Quebec Legislature, which need not be mentioned here. By The Canadian Northern Railway Guarantee Act, 1914, Chapter 20, Section 15, Statutes of Canada, 1914, which was assented to and came into force on June 20, 1914, the works and undertaking of the Quebec and Lake St. John Railway Company were declared to be works for the general advantage of Canada. The railway thereby became subject to the provisions of the Railway Act of Canada.

The portion of the railway through the Municipalities was constructed in or about the year 1883. The line of railway in question is operated as part of the Canadian National Railways System.

The original railway bridge over the Ste. Anne de la Perade River, in the Parish of St. Raymond, was built in or about the year 1883. On the application of the Canadian Northern Railway Company, the Board of Railway Commissioners for Canada, by Order No. 25155, dated the 13th day of July, 1916, authorized that company to reconstruct the said bridge, at the crossing of Ste. Anne River at St. Raymond, Quebec, as shown on plan dated June 15, 1916, on file with the Board under file No. 27152. The plan just referred to provided for a two plate girder span with a pier in mid-stream.

By a further Order of the Board, No. 26814, dated the 10th day of December, 1917, made on the application of the Quebec and Lake St. John Railway Company, the Board authorized that company to construct a proposed new bridge at the crossing of the Ste. Anne River at St. Raymond, Quebec, to take the place of the structure approved by the Order of the Board No. 25155, dated July 13, 1916, as shown on the plan (Drawing No. 40305), dated 4th December, 1917, and the Dominion Bridge Company's stress sheets, dated December 3, 1917, on file with the Board under file No. 27152. The prior Order No. 25155, dated the 13th day of July, 1916, was, at the same time, rescinded.

The substituted plan, for the reconstruction of the bridge, referred to in Order No. 26814, dated the 10th day of December, 1917, provided for a through truss without any centre pier. This change in plan, it appears, was made by the railway as a result of complaints by the lumber interests and a notarial protest served on March 30, 1917, by the Municipality of St. Raymond, against the original scheme which provided for a pier in the middle of the river.

By Order No. 27277, dated the 1st day of June, 1918, the Board authorized the Quebec and Lake St. John Railway Company to use and operate the said new bridge.

The original bridge or structure, built in or about the year 1883, had an over all span of 227 feet. The new bridge which replaced the old one had an over all span of 215 feet. It was, therefore, narrowed in length by about twelve feet. Each of the two concrete abutments of the new bridge, about six feet thick, were built in front of the masonry abutments of the original bridge. This had the result of contracting the channel of the river by several feet. In reconstructing the bridge the base of rail elevation on the bridge was also raised by four feet. As of necessity, the railway embankment and rails for several hundred feet on both the east and west side of the bridge were raised to conform with the increased elevation of the bridge. Subsequent to the year 1924 certain portions of the embankment and tracks east of the bridge were further raised by at least ten inches.

St. Raymond Parish and St. Raymond Village are located in a valley, bounded on the north by hills with steep slopes, to the south by sandy cliffs with plateaus above. About the centre of this valley flows the Ste. Anne River. The banks of the river are low, and so are the lands immediately adjoining. The village itself stands but little higher. But a few hundred feet distance upstream to the north of the railway bridge the Bras du Nord River empties into the Ste. Anne River. The railway embankment, or grade, crosses this low land area nearly at right angles to the river Ste. Anne. The top of the embankment for a distance east of the bridge is from ten to fifteen feet above the surrounding ground. There are at present no culverts or openings in this embankment, other than at the bridge over the Ste. Anne River. There was at one time a culvert or opening of some kind in the railway embankment on the west side of the bridge, which one of the witnesses states was filled in about thirty or thirty-five years ago. But there is nothing to show the nature or dimensions of this culvert, or exactly when, why or by whom it was filled in.

The Ste. Anne River as it passes through St. Raymond has a general width of from two to three hundred feet. It is fairly tortuous, with some sharp bends, with shallow water. In some of these bends, the channel is contracted with the presence of islands. The river is dammed about two miles below the railway bridge, at the location of the pulp mill of News Pulp and Paper Company, Limited, at Panet Falls.

The application and complaint of the Municipalities to the Board was made following, and, I think, as a consequence of two severe floods which took place in the Village and Parish, the first about September 10, 1924, and the second on September 30 and October 1, 1924. Of these two floods, the latter was the most severe as the water rose to higher levels. As a result of the floods, portions of both the Village and Parish were inundated with water, to a considerable depth. The lower portions of a number of houses and buildings in the Village and of some of the farm houses and buildings in the Parish were flooded. As the result of this flooding the Municipalities suffered damage, and substantial damage was done to the lands and property of a considerable number of people in each of the Municipalities. This resulted in substantial loss and inconvenience to the parties affected.

Following the application and complaint of the Municipalities the Board caused an investigation to be made, on September 25, 1925, of the situation and conditions on the ground, by Mr. H. A. K. Drury, its then Assistant Chief Engineer, and Mr. C. L. Savary, an engineer of the Department of Lands and Forests of the Province of Quebec. Both of these engineers reported their findings in writing to the Board, Mr. Savary under date September 28, 1925, and Mr. Drury under date October 17, 1925, in which he concurred in Mr. Savary's report.

Subsequently the Railways arranged to have a hydraulic engineer of outstanding ability look into the situation and report. At the beginning of May 1926, the firm of Walter J. Francis and Company was engaged, and the principal of that firm, Mr. F. B. Brown, personally took the matter in hand. Mr. Brown, in his report, dated May 20, 1926, to the Board and the Railways, went into the whole matter very thoroughly.

As earlier referred to, an investigation was also made and a report presented on the flooding conditions at St. Raymond, by Olivier Lefebvre, Esq., Chief Engineer, Quebec Streams Commission. This report is dated July 13, 1928.

It transpired that none of the engineers who made the reports mentioned were, through death or other cause, available to be called as witnesses at the recent hearing. We have, however, the advantage of their reports, which were referred to and discussed by counsel for the parties, at the hearing.

The Railways called, among others, as a witness, Mr. D. W. McLachlan, of Ottawa, an engineer of high standing and wide experiences in hydraulic matters, and in other branches of the engineering profession. Following an examination of the conditions at St. Raymond in the summer of 1944, and an extensive study of all material and records available pertaining to the matters here involved, including official records of rainfall and flow of the rivers, Mr. McLachlan prepared and presented his report to the Railways, dated October 16, 1944. A copy of this report was filed with the Board at the hearing. Mr. McLachlan was also examined and cross-examined at length on his report by counsel for the Railways and the Municipalities, respectively.

It may be said that there is little difference of opinion between the technical men who investigated and made reports in respect to the flood conditions during and since 1924. They are all, including Mr. McLachlan, in substantial agreement on most of the main points of fact.

A considerable number of the local residents of the Village and Parish of St. Raymond were called as witnesses on behalf of the Municipalities. Most of these have resided at St. Raymond continuously for some years prior to and since the 1924 flood, and had been eyewitnesses of the flood conditions. Two or three were able to speak of conditions since the construction of the railway, in or about the year 1883.

During the course of the hearing, namely, on November 9, 1944, the Board, accompanied by its Chief Engineer, and in company with counsel and other representatives of the parties went to St. Raymond and made an examination on the ground of the railway bridge, the railway embankment, the two highway bridges toward the east side of the Village, one over the Ste. Anne River and the other over the Bras du Nord River. We also examined certain areas of the Village, the Parish, and Panet Falls where the News Pulp and Paper Company Limited have a dam and works.

The Ste. Anne de la Perade River is a north shore tributary of the St. Lawrence River and it flows into this latter river about 48 miles upstream from the City of Quebec. It originates in the Laurentian country, 1,576 feet above sea level. It is about 75 miles long. The drainage area upstream from the Railways' bridge at St. Raymond is about 605 square miles. It is served by two branches, the larger of which is called the Bras du Nord River and the smaller, the Ste. Anne River. Of this area the Bras du Nord drains about 315 square miles, and the north east branch of the Ste. Anne River about 290 square miles. Counsel for the Municipalities and the Railways agree that the river is not a navigable river.

The water level below the power plant at the Panet Falls dam is about 407 feet above sea level. The surface of the solid rock about 428 feet and the crest of the dam between 435 and 435.9 feet above sea level.

The Railways' bridge over the Ste. Anne River is about 2.0 miles upstream from the dam at Panet Falls. The Village of St. Raymond is 1.3 miles upstream from the railway bridge and 3.3 miles upstream from the dam at Panet Falls.

Under low-flow conditions the water surface of the river is held close to the crest level of the Panet Falls dam. Upstream from the dam the river flows in a uniformly placid manner for about 2·6 miles at which location rapids occur due to steeper drainage slopes in the riverbed. Opposite the Village of St. Raymond low water level stands about 5 feet above the crest of Panet Falls dam, and one mile further upstream water levels stand about 10 feet above the crest of the dam.

Under extreme high water conditions, as existed during the flood of September 30-October 1, 1924, the river levels would be about as follows:—

- At Panet Falls—about 7·5 feet above the crest of the dam;
- 1 mile upstream—about 13 feet above the crest of the dam, or 12·6 feet above low water level;
- Just below the C.N.R. bridge—about 15·2 feet above the crest of the dam, or 14·5 feet above low water level;
- Just above the C.N.R. bridge—about 17 feet above the crest of the dam, or about 16·3 feet above low water level;
- At St. Raymond—about 17·4 feet above the crest of the dam, or 12 feet above low water level.

The above data shows that there are great variations in the water levels in this river, at different stages of flows.

The Village and Parish of St. Raymond suffer from two kinds of floods. One occurs during the spring break-up period when the fast flowing sections of the river are open and the slow moving sections are closed with ice. The other occurs with unusual summer rainstorms which produce flows far greater than those experienced during the break-up period.

The first kind of flood inundates portions of the Village and Parish when the river discharge reaches about 16,000 cubic feet per second, as occurred on or about March 19, 1936, and the second kind of flood inundates portions of the Village and Parish when the discharge reaches 30,000 c.f.s., or more. The flood of October 1, 1924, was brought about by a river discharge at St. Raymond computed by Mr. Lefebvre at 39,000 c.f.s., by Mr. Brown at 38,000 c.f.s., and by Mr. McLachlan at 38,700 c.f.s.

The Ste. Anne de la Parade River has a rather short wide drainage area with a rapid fall (1,158 feet in 35 miles) with few lakes to modify its flow. Its surface is largely rock and sand. Computations made by one of the engineers indicate that rain falling on its upper reaches would pass St. Raymond about 24 hours after it falls on the ground.

The weighted rainfall for the territory surrounding the Ste. Anne River for the 24 hours preceding the peak of the flood of October 1, 1924, average about 4·11 inches and a flow of 38,700 cubic feet per second. The 1924 flood was created by an abnormal and unusual condition. One such as could only be anticipated to recur once in a considerable number of years. Mr. McLachlan states that a rainfall of 4·11 inches in 24 hours may be expected to occur at stations in the Province of Quebec only about once in 57 years, if the records of the past can be taken as a guide for the future.

Although not reaching the height of water of the October 1, 1924, flood, the fact remains that since that time there have been, at least, two other major floods at St. Raymond. One of these occurred on or about July 21, 1930, and the other on May 27, 1943. In the 1943 flood the water rose to an elevation of 448·9 feet above sea level, as compared with 452·2 feet on October 1, 1924. The flood of 1930 was less serious than the flood of 1943. These floods also did substantial damage to some of the lands and property in each of the Municipalities and occasioned much inconvenience and loss, particularly to the owners of the lands which were flooded.

So far as is shown by the record, the 1924, 1930 and 1943 floods are the major floods which have occurred in the Village and Parish of St. Raymond. From the evidence given by local inhabitants, I am satisfied, however, that there

have also been other open river floods, in St. Raymond, since the year 1924. These, while occasioning damage, were of a lesser nature than the major floods referred to, and apart from the usual spring run-off floods.

The Ste. Anne River from a point about one-half mile above the Village of St. Raymond to a point about two miles below has under flood conditions, a peculiar flat lake area which is quite different from the valley above and below. The river in flowing through this area behaves like an alluvial stream. It has filled in and has cut out many new channels as flows have risen and fallen. Below this lake like area, the regime changes. At flood level it returns to a form where its banks confine it. It is no longer a winding alluvial stream. Its current is fast and its sectional area substantially contracted.

Mention was made above of a flood at St. Raymond, on or about March 19, 1936. To illustrate what may occur in this area, even during a spring break-up, or spring run-off flood, it would seem desirable to add something further about this occurrence. On March 24, 1936, the Board received, on behalf of several riparian owners at St. Raymond, a complaint stating that they had suffered damages from the flood, and alleging that the Railways were responsible. At the same time the Board was requested to send an engineer to St. Raymond to investigate. On April 16, 1936, an examination was made by one of the Board's District Engineers on the ground. Under date April 21, 1936, the District Engineer reported to the Board. The result of his examination and his findings he states, in part, as follows:—

"It appears that an ice jam formed above and below the highway bridge near the church, particularly in the rear of the Town Hall. While the ice was coming down the Ste. Anne River at this point, it was solid at the Bras du Nord River and at the railway bridge. It appears that the ice spread over the low land north of the river below the bridge to a height of between 4 and 5 feet and touching the under-side of the highway bridge. The water then stood to a height of 14 inches below the bridge seat of this bridge or to elevation 452.55 which is equal to almost the water elevation at the time of the flood in 1924 which was 452.2. At the railway bridge the ice was solid and no water was running. The elevation of the ice was found to be 10 feet 9 inches below the base of rail or to elevation 444.65 which is 7.45 feet below the elevation of the water on the north side of the bridge at the time of the extreme flood in 1924 which was then at elevation 452.1. At the dam of the News Pulp & Paper Company at Panet Falls it appears that the water was running at elevation 440 or a height of 4.9 feet above the spillway and 2.9 feet below the flood elevation of September, 1924. The top of the stop log at the sluiceway was found to be at elevation 438.25 and 3.15 feet above the spillway which is at elevation 435.10.

"The conditions which obtained on the 19th March were not due to the opening at the railway bridge across the river but were due to the ice in the Ste. Anne River starting to come down while below the Town Hall and between this point and the railway bridge and also below the railway bridge as well as in the Bras du Nord River the ice was solid and had not started to move. It appears that the water under the bridge never rose higher than the elevation at which the ice was found to be on the 20th March. At present the water elevation under the bridge is 19.6 below the base of rail which is equal to elevation 435.8 which is 6.2 feet below ordinary high water elevation of 442.0."

This report and finding of the Board's District Engineer was not challenged. I think it is clear that the Railways were in no way responsible for the flooding of March 19, 1936.

The waterway of the original railway bridge, at ordinary low water, had a cross-sectional area of 1,930 square feet, and, at ordinary high water, 4,133 square feet. The new structure erected in 1917 or 1918 provided a waterway, at ordinary low water, of 1,908 square feet, and, at ordinary high water, 3,968 square feet. The Railways in their answer, dated July 3, 1925, to the Municipalities' application, in reference to the contraction of the sectional area of the bridge state, "You

will observe that the increased height of water, due to restricting the span, at low water is one-tenth of a foot, while at extreme high water the increased elevation would be approximately eight-tenths of a foot." The ordinary low water level is at about an elevation of 437·00 feet above sea level, and the ordinary high water mark, at 442·00 feet. At the time of the peak flood of October 1, 1924, the water elevation was 450·16 on the south side of the railway track, and a top elevation of 452·1 on the north side of the track. The presently measured cross-section area of the bridge is 5,631 square feet for water levels as recorded during the flood of October 1, 1924. This was, however, an unusual and abnormal high water condition. The water in the river at the bridge rose to a height of eight or nine feet above the ordinary high water mark.

The Railways place considerable stress on the contention that the cross-section area of the opening of the new or present bridge conforms to the best engineering practice. In support of this contention, Mr. McLachlan states that the cross-sectional areas which various standard authorities recommend for a bridge opening on a stream of the type here in question are as follows:—

Talbut's formula for drainage areas over 400 sq.	
miles and hilly country.....	5,020 sq. ft.
Dun data for Missouri.....	4,960 " "
Dun data for Connecticut.....	4,925 " "
Dun data for Tonawanda Creek.....	5,070 " "
Engineering News Formula.....	4,520 " "

As mentioned above the presently measured cross-section area of the railway bridge is 5,631 square feet for water levels as recorded during the flood of October 1st, 1924. On this fact, and the basis of the above standard authority recommendations Mr. McLachlan gives his opinion that the present drainage opening of the bridge is quite ample. The record does not show whether the authorities referred to base their recommendations upon ordinary high water level conditions, or upon an abnormal and unusual condition such as was present on October 1st, 1924. This evidence, therefore, is not very helpful. But in view of what is said later about the joint effect of the reconstructed bridge and the railway embankment, on the heading-up effect of the water, the point is of less importance.

As has been previously said, the Village of St. Raymond is subject to partial inundation due to freshets when there is ice fixed in the river, and also due to freshets when there is no ice in the river. The former inundation occurs with the flows of about 16,000 c.f.s. with a water level of about 440 feet at the Panet Falls dam, with a water level of about 444·6 feet at the Railways' bridge and a steeply rising water surface from a point about 1,000 feet upstream from the railway bridge to the Village of St. Raymond where the water level rises to as much as 4 feet above street level, or to elevation 452·55 above sea level, as on March 19 or 20, 1936.

A flood of the open river type such as occurred on October 1st, 1924, begins to affect St. Raymond when the flood exceeds about 30,000 c.f.s., and when the flow reaches 38,700 c.f.s., there is about 4 feet depth of water on the lower parts of the Village of St. Raymond and up to 6 or 7 feet on the flat lands between the Bras du Nord River and the Ste. Anne River, opposite St. Raymond.

Part of the Railways' tracks east of the bridge are at elevation 448·2 feet at base of rail, at the lowest point. During the October 1st, 1924 flood, the water rose above the level of the track. There was a considerable flow of water over the track. This flow has been estimated by Mr. McLachlan as 5,000 c.f.s. at the peak of this flood. On the occasion of the October 1st, 1924 flood, a portion of the railway embankment was washed out to the depth of a few feet. Some idea of the extent of the damage to the Railways' track and embankment on this occasion, may be gathered from the fact that the cost to the Railways of restoring the track and embankment to its former condition

was \$4,900.00. A similar condition, as to inundation and scouring of the track and embankment, resulted from the other major floods of July 21, 1930, and May 27, 1943, but to a less degree and consequently with less damage to the railway tracks and embankment.

It is amply clear, in respect to the major floods, that, as soon as a section of the Railways' embankment was washed out, the flood waters in the Village and Parish began to recede.

The Railways, in their application of July 9, 1930, admitted that the contraction of the river channel by the railway embankment was responsible for raising the water above the bridge by 2.1 feet at the time of the September 30th-October 1st, 1924 flood. Mr. McLachlan states that the presence of the railway bridge and embankment were responsible for a heading-up effect in the river levels of 1.8 feet, or about 22 inches, at a point about 1,800 ft. upstream from the railway bridge. That this heading-up effect of 1.8 feet will diminish upstream from the railway bridge and at the Village of St. Raymond the heading-up effect will be something less than the figure mentioned. Mr. McLachlan puts his conclusion on this point in another way by stating that the complete removal of the Railways' bridge and embankment would have reduced the level of water in this river at St. Raymond at the time of peak flood by an amount of only 1.8 feet.

I think that it may be taken that the bridge and embankment works of the Railways were together responsible for raising the water above the bridge by approximately two feet at the time of peak flood on October 1st, 1924. A reduction in depth of flood water, of course, results in a corresponding reduction in the area of property flooded.

It is of interest to say something of the extent of the areas flooded, in both the Village and Parish of St. Raymond during the extreme high water conditions of October 1st, 1924. What I say on this point is taken from calculations made by Mr. McLachlan, and may, I think, be accepted as approximately correct.

The area of land inundated upstream from the Railways' bridge may be separated into two parts, that north of the Ste. Anne River which is in the Parish of St. Raymond, which is largely meadow and farm land, and that south of the Ste. Anne River which is within the limits of the Village of St. Raymond. A substantial portion of it is also farm land.

The area flooded to contour 452.1 in the Parish of St. Raymond is computed at 562 acres. Of this 65 acres may be taken as flooded in the upper 2 feet depth of water. The area flooded within the boundary of the Village of St. Raymond is computed at 148 acres, of which 23 acres may be taken as the flooding of the upper two feet of depth. It is not possible from what is before us to say with reasonable certainty how much of the flooded area is within the built up portion of the Village.

According to the computations of Mr. McLachlan, if the Railways' bridge and embankment had been nonexistent on October 1st, 1924, the area of land inundated by the flood would have been reduced by 90 per cent of 88 acres or 79 acres. That is the area of land inundated upstream from the railway bridge would have been 632 acres, not the 710 acres which were flooded on that date.

It would not seem necessary to say anything about the area of lands flooded downstream below the railway bridge. I do not think that the Railways' bridge and embankment can have any material effect on the level of the flood water, or area of property flooded, at any point downstream from the bridge and embankment.

The evidence of witnesses for the Municipalities shows that they had floods at St. Raymond prior to 1917. But these floods were less severe than the open river floods which they have had since that time. This condition has, I think, been occasioned to a considerable degree by the raising of the railway embankment, and by the contraction of the river channel by about twelve feet at the time

of reconstruction of the bridge. These have the effect, at the time of heavy floods of holding the water upstream to the north of the embankment and bridge at a higher level, and consequently cause greater flooding in the Municipalities.

It should be noted that other local factors contributed somewhat to the St. Raymond flooding in 1924, and on other occasions. There are a large number of lumbermen's cribs or piers in the river. Two or three of these are above, and the remainder below the railway bridge. These cribs together with the dam at Panet Falls are, in part, responsible for the open river flooding conditions at St. Raymond. These two factors together, it is calculated, were responsible for raising the water level at the time of extreme flooding on October 1, 1924, at a point 1,800 feet upstream from the railway bridge, to the extent of about 1.50 feet or about 18 inches. Of these two causes it would seem that the greater responsibility rests with the presence of the lumbermen's cribs in the river.

The News Pulp and Paper Company, Limited, the owner of the dam, or the owners of the cribs (whoever they may be), were not parties to these proceedings, and nothing herein stated should be taken as, or is it intended to, in any way affect or prejudice the rights, or obligations, if any, of such persons or any of them. In any event I do not think that we have any jurisdiction to deal with the situation so far as they are concerned.

On the record and material before us, I do not think that the bridge and embankment of the Railways can have much, if any, effect on the elevation of high flood water at times of winter or spring freshets when there is an ice gorge in the river.

The Board's Order No. 38473, dated the 27th day of November, 1926, which the Railways ask to have rescinded, directed the Railways to put in an opening in the east embankment at the bridge over the Ste. Anne River in the Parish of St. Raymond, with a span about two hundred feet long, the bottom at about elevation 430. To carry out the works provided for in said order would necessitate the excavation of a channel about one half mile long, about 210 feet wide and to an average depth of about 10 feet. According to the report of Mr. Olivier Lefebvre, Chief Engineer, Quebec Streams Commission, dated July 13, 1928, this would involve the excavation of 207,000 cubic yards of earth. The figure is, I think, approximately correct.

In 1930 the Railways estimated the cost of carrying out the works provided by the order at about \$260,000; and that taking into consideration interest, depreciation and additional maintenance, the cost to the Railways would be in the vicinity of \$20,000 per annum. Mr. McLachlan estimates the cost of doing the work today at \$359,000. This estimate he calculated on unit prices supplied by the Railways. Some of these unit prices were challenged by counsel for the Municipalities, as being excessive. I think, however, that the amount may be taken as an approximate estimate of the present day cost. This work if carried out would, on the calculations of one or more of the engineers, only result in a lowering of the elevation of the water in St. Raymond under conditions such as prevailed on October 1, 1924, by about 1.19 feet or 14 inches.

Apart from the question of cost of the project provided for in the said Order No. 38473, of November 27, 1926, there is a somewhat serious structural objection, namely: Because of the nature and action of the river during high water and flood conditions, the channel ten feet in depth would, I am satisfied, become partially filled in by silt, sand and gravel carried down from the upstream section of the river. It would not remain permanent. This, it is estimated, would result in the opening becoming twenty-five per cent less effective than when originally constructed.

Counsel for the Railways contend, first, that the Board did not have jurisdiction or power to make the Order complained of, and, second, that if it did, the Order was not a sound Order to make.

I do not think that the relief from flooding conditions in the municipalities, that can reasonably be expected to result, would warrant the large expenditure involved in the construction and maintenance of the works which the Railways were directed to do under the Board's said Order No. 38473, dated the 27th day of November, 1926. I would, accordingly, rescind the Order.

In view of the decision which I have reached in respect to the Order it is not necessary to say anything at this stage on the Railways' first contention. A like question, however, arises later.

There remains for consideration what other Order if any, should be made on the application of the Municipalities.

Counsel for the Railways contends that in the construction and reconstruction of the bridge and embankment the Quebec and Lake St. John Railway Company and the Railways observed all statutory requirements which they were compelled by law to observe; that they did exactly what they were permitted and required by law to do; and that, consequently, under these circumstances the Board is without jurisdiction or power to make any Order requiring the Railways, or its predecessors in interest, to construct an opening or openings in the embankment for the purpose of relieving flooding of lands and property in the Municipalities; but that, if the Board should find as a fact that the portion of the railway in question is unsafe for the operation of trains, and dangerous to the public using the same, there could be no valid objection to any Order made on that ground, to remedy such a situation.

No evidence is offered to show that in the original construction of the bridge and the portion of the embankment and railway in question, the Quebec and Lake St. John Railway failed in any way to observe and carry out all statutory requirements which it was required to carry out or observe, nor is there any evidence before us of negligence, or failure in duty, on the part of that railway company or the Railways, in the original construction of the railway line, or in anything that was done down to the time of the reconstruction of the bridge and the raising of the embankment in 1917 or 1918.

In the absence of such evidence we must assume that there was no negligence in carrying out of the works of the original construction, or in anything that was done down to the time mentioned, and that the damage, if any, occasioned thereby was due solely to a reasonable exercise by the companies of the powers conferred upon them. See *Department of Agriculture for Canada v. Grand Trunk Railway Company*, 23 C.R.C. 77.

The reconstruction of the bridge and the raising of the railway embankment have, however, as earlier stated, the effect at the time of heavy floods of backing up and holding the water upstream to the north of the embankment and bridge at a higher level, and consequently cause greater flooding and damage in the Municipalities. The result thus occasioned constitutes, I think, the main ground of complaint of the Municipalities so far as the Railways are concerned.

Counsel for the Municipalities relies mainly on Sections 268 and 269 of the Railway Act and more particularly Section 269.

By Section 268 of the Railway Act a railway company is required in constructing the railway "to afford sufficient outlet to, drain and carry off the water, or to convey the water supply, and so that the then natural, artificial, or existing drainage, or water supply, of the said lands shall not be obstructed or impeded by the railway."

Section 269 of the Act provides, that,

"Whenever

- (a) any lands are injuriously affected by reason of the drainage upon, along, across or under the railway being insufficient to drain and carry off the water from such lands; or

(b) any municipality or landowner desires to obtain means of drainage, or the right to lay waterpipes or other pipes, temporarily or permanently, through, along, upon, across or under the railway or any works or land of the company;

the Board may, upon the application or complaint of the municipality or landowner, . . . order . . . the company to construct such drainage or lay such pipes,”

And by subsection 2 of Section 269 it is provided that the Board may, “in its discretion, order how, where, when, by whom, and upon what terms and conditions, such drainage may be effected, or pipes laid, constructed and maintained”

I am inclined to think that, under the facts and circumstances present here, the Board would have authority under Section 268 and Sections 33 (2) and 34 (a) and (b) of the Railway Act to make an Order granting relief to the applicants. But, in any event, it would seem clear that ample authority for the making of such an Order is given to the Board by Section 269 of the Act.

Certain lands in the Municipalities are injuriously affected by reason of the drainage across or under the railway being insufficient to drain and carry off the water from such lands. The Municipalities are desirous of obtaining means of drainage for such lands through and across the railway, and have, in effect, made application and complaint accordingly.

The Municipalities and the landowners are, I think, entitled to some relief from the conditions which have been occasioned, to a certain degree, by the works of the Railways.

While not advancing it as a recommendation, Mr. McLachlan includes in his report a plan for enlarging the opening in the Railways' embankment by 2,000 square feet. This scheme contemplates the introduction of four 50 ft. spans which will give a clear opening of 200 feet wide and 10 feet deep at the flood stage. In this project no prism excavation is contemplated. If built it would divert, it is estimated, about 10,700 c.f.s. from other channels during extreme flood stage. Its estimated cost is \$120,000.

In the course of his argument at the hearing, counsel for the Railways announced that the Railways had decided, for the purpose of preventing the washing out of their embankment and tracks during flood conditions and to avoid the expense of restoring and repairing the same, to put in one hundred and forty-four feet of creosoted timber trestle, with twelve foot centres, on the east side of the bridge between the west leg of the wye and the bridge; remove the embankment under the trestle to the approximate level of the adjacent ground; and raise the tracks to take out the present sag. Since the hearing the Railways have submitted for approval of the Board plans for the proposed pile trestle and works. This application for aproval of the plans has not been disposed of.

Counsel for the Railways strongly stressed the point that what they propose to do was not being done as a result of the application or hearing; that it is a project which, in the ordinary course of railway operation would have been undertaken in any event; and that it was being put in to ensure the safety of train operation so the washing out of the embankment will completely disappear in the future.

There can be no doubt that the portion of the embankment and railway is, at the time of severe flooding, rendered unsafe for the operation of trains, and dangerous to the public using the same. In fact, during the major floods the operation of trains, of necessity, had to be abandoned entirely until the waters subsided and the embankment and tracks of the railway were restored. It should, however, be stated that no accident has occurred on the railway due to the causes mentioned.

The cross-sectional area of the proposed pile trestle is approximately the same as that of the maximum amount of embankment washed out in the worst flood experience. For the purpose of safety alone this would, I think, be a minimum requirement.

The ground level at the location of the proposed trestle opening is at about 440 feet above sea level. Such an opening would give a clear depth of about ten feet at flood stage.

Works of the nature which the Railways propose to carry out would, I think, be a practical scheme and one which could be executed at reasonable cost. But, as I view the matter, the length of the pile trestle suggested, namely, one hundred and forty-four feet, would not allow a sufficient opening under the railway to meet the situation present here.

Upon most careful consideration of all that has been placed before us I would direct the Railways to put in an opening or openings in the railway embankment under their tracks, by the construction of not less than two hundred and sixteen feet of ballast deck creosoted timber pile trestles, with not less than twelve foot centres, on the east side of the bridge between the west leg of the wye and the bridge; the embankment under the trestle to be removed to the approximate level of the adjacent ground. Plans will be filed by the Railways for the approval of an engineer of the Board.

This would, after allowing for the space taken up by the piles, leave openings close to two hundred feet in length for passage of the water during flood conditions.

The condition created in the Municipalities is the result of the construction of the railway, to the extent earlier stated. The Railways, for their own purposes, have decided to put in one hundred and forty-four feet of pile trestle and to remove the embankment under such trestle. Under all the facts and circumstances here present, I would place the whole of the cost of both construction and maintenance upon the Railways.

Dated February 21, 1945.

J. A. CROSS.

I concur

HUGH WARDROPE.
G. A. STONE.

(Traduction)

Requête du chemin de fer Canadien-National demandant l'émission d'une ordonnance révoquant l'ordonnance n° 38473, en date du 27 novembre 1926, rendue à la suite de la requête du village et de la paroisse de St-Raymond, comté de Portneuf, P.Q., demandant qu'il soit ordonné au chemin de fer Canadien-National de construire des ponceaux sur sa voie ferrée (Québec et Lac St-Jean) à chaque extrémité du pont sur la rivière Ste-Anne, dans ladite paroisse de St-Raymond; et demandant la revision et reconsidération de ladite ordonnance n° 38473, en date du 27 novembre 1926, et une nouvelle instruction de ladite requête du village et de la paroisse de St-Raymond.

Dossier n° 27152

Mtres C.-V. Darveau, C.R., et A.-K. Dysart comparurent pour le chemin de fer Canadien-National;

Mtres Valmore Bienvenue, C.R., et Jean Lesage pour le village et la paroisse de St-Raymond;

M. J.-O. Martineau pour le ministère de la Voirie de la province de Québec; et Me André Taschereau, C.R., et M. M. Gagné pour la News Pulp and Paper Company Limited, mais ne prirent aucune part aux délibérations.

Entendue à Québec les 8, 9, 10, 15 et 16 novembre 1944.

JUGEMENT

Cross, *Commissaire en chef*:

Il s'agit d'une requête du chemin de fer Canadien-National, ci-après appelé le chemin de fer, demandant une ordonnance révoquant l'ordonnance de la Commission n° 38473, en date du 27 novembre 1926, émise à la suite de la requête du village et de la paroisse de St-Raymond comté de Portneuf, P.Q., ci-après appelés parfois les municipalités, laquelle requête demandait qu'une ordonnance soit rendue enjoignant au chemin de fer de construire des ponceaux sur sa ligne (Québec et Lac St-Jean) à chaque extrémité du pont sur la rivière Ste-Anne, dans la paroisse de St-Raymond, et demandant la revision et reconsidération de ladite ordonnance n° 38473, en date du 27 novembre 1926, et une nouvelle instruction de ladite requête des municipalités.

Ce que comporte la présente cause est une affaire de longue durée. En conséquence, il serait opportun de mentionner quelques faits se rapportant à son histoire.

En juin 1925, les municipalités ont soumis une requête à la Commission alléguant que le chemin de fer est le propriétaire d'une voie ferrée qui traverse la rivière Ste-Anne dans les limites du village et de la paroisse de St-Raymond; qu'un pont avait été érigé sur la rivière, dont les piliers sont tellement rapprochés les uns des autres qu'ils empêchent l'écoulement libre des eaux de ladite rivière; que les approches du pont constituent un remblai tellement élevé que dans le cas d'un débordement de ladite rivière il y aurait obstacle à l'écoulement libre des eaux, et qu'à la crue des eaux les deux municipalités concernées subissent des dommages considérables, ainsi que les propriétaires des terrains avoisinants situés en amont à partir du pont, lesdits dommages étant causés par la présence desdits pont et remblai qui obstruent le libre cours des eaux, et demandant qu'une ordonnance soit émise enjoignant au chemin de fer de faire les travaux nécessaires pour permettre le libre cours des eaux de ladite rivière Ste-Anne lorsqu'il se produirait une inondation, et d'ériger des ponceaux d'une largeur suffisante de chaque côté du pont, ou d'exécuter tous autres travaux qui rendraient plus libre l'écoulement des eaux de ladite rivière.

La Commission, après avoir pris connaissance des pièces soumises à l'appui de la requête du village et de la paroisse de St-Raymond et au nom du chemin de fer, rendit l'ordonnance n° 38473, en date du 27 novembre 1926, par laquelle elle enjoignit au "Canadien-National de pratiquer une ouverture dans le remblai du côté est dudit pont sur la rivière Ste-Anne, dans la paroisse de St-Raymond, comté de Portneuf, P.Q., d'une longueur d'environ deux cent pieds avec base à l'élévation 430 près".

Il se trouvait au dossier de la Commission, lors de la préparation de son ordonnance n° 38473, un rapport daté du 17 octobre 1925 d'un ingénieur du ministère des Terres et Forêts de la province de Québec, du nom de C. L. Savary, à la conclusion duquel s'était rallié l'ingénieur en chef adjoint de la Commission, feu H. A. K. Drury, ainsi qu'un rapport de M. Frederick B. Brown, ingénieur principal de la société Walter J. Francis & Company, de Montréal, ingénieurs conseils, en date du 20 mai 1926.

Après réception d'une copie de l'ordonnance de la Commission n° 38473, l'avocat général du chemin de fer adressa à la Commission une lettre, en date du 2 décembre 1926, par laquelle il protestait contre les termes de ladite ordonnance et demandait, en vertu de l'article 51 de la Loi des chemins de fer, une nouvelle instruction de la cause pour que le chemin de fer ait l'occasion de se faire entendre à l'encontre de la requête.

À la suite de cette lettre du 2 décembre 1926, mentionnée ci-dessus, d'autres inspections et enquêtes ont été faites par les ingénieurs de la Commission, et nous avons échangé de la correspondance avec le chemin de fer et avec la Commission des Eaux courantes relativement à cette question. En date du 13 juillet

1928, la Commission reçut une copie du rapport de M. Olivier Lefebvre, ingénieur en chef de la Commission des Eaux courantes de la province de Québec, lequel était adressé à l'honorable J.-A. Tessier, président de ladite Commission. Ce rapport concernait la crue des eaux de la rivière Ste-Anne de la Pérade à St-Raymond, le 30 septembre et le 1er octobre 1924, et avait été fait à la suite d'une enquête approfondie de la part de M. Lefebvre, durant l'été de 1927, sur les conditions dans cette section de la rivière Ste-Anne, entre la digue de la News Pulp and Paper Company et le village de St-Raymond.

L'on remarquera que l'enquête et le rapport de M. Olivier Lefebvre ont été faits après l'émission de l'ordonnance de la Commission n° 38473, en date du 27 novembre 1926.

Le 10 juillet 1930, le chemin de fer soumit une requête formelle à la Commission, datée du 9 juillet 1930, demandant, en vertu de l'article 51 de la Loi des chemins de fer, une nouvelle instruction par la Commission au complet de la requête du village et de la paroisse de St-Raymond, et la revision de ladite ordonnance n° 38473, en date du 27 novembre 1926.

La Commission décida d'accorder la requête du chemin de fer demandant une nouvelle instruction de la cause et l'avocat général adjoint du chemin de fer fut avisé à cet effet le 20 octobre 1930, avec demande en même temps de suggérer une date convenable pour cette nouvelle instruction après avoir consulté toutes les parties intéressées. Aucune date ne fut par la suite suggérée.

La requête fut finalement entendue en la cité de Québec, le 29 octobre 1935, en présence des avocats des municipalités et du chemin de fer, et il fut alors ordonné que la mise à exécution de l'ordonnance de la Commission soit suspendue jusqu'à la nouvelle instruction de la cause. Sur la suggestion de l'avocat des municipalités, il fut convenu que ce dernier confère avec les avocats du chemin de fer pour en arriver à une entente sur une date pour la nouvelle instruction de la requête des municipalités, le tout sujet, toutefois, au bon plaisir de la Commission. Aucune suggestion ou demande ne fut par la suite faite à la Commission relativement à la date de la nouvelle instruction par ou au nom d'une des parties intéressées.

Cette question demeura en suspens jusqu'aux premiers jours de 1944, alors qu'une demande d'information fut reçue de la part des avocats actuels des municipalités pour savoir où en était rendue cette affaire. Tel que mentionné ci-dessus, la requête du chemin de fer et celle des municipalités furent entendues en la cité de Québec au mois de novembre 1944.

La ligne de chemin de fer en question qui passe à travers le village et la paroisse de St-Raymond faisait autrefois partie de la ligne du chemin de fer Québec et Lac St-Jean, laquelle, antérieurement à l'année 1914, était une ligne de chemin de fer provinciale. En vertu du chapitre 53, 32 Victoria, Statuts de Québec 1869, des dispositions furent prises en vue de la constitution en corporation de la compagnie de chemin de fer Québec et Gosford. En 1871, en vertu du chapitre 24, 34 Victoria, le nom de la compagnie fut changé pour celui de Compagnie de chemin de fer Québec et Lac St-Jean. La Législature de Québec amenda par la suite ces lois; il n'est pas nécessaire de faire ici mention de ces amendements. En vertu de la Loi de 1914 relative à la garantie des engagements du Canadian Northern Railway, chapitre 20, article 15, des Statuts du Canada de 1914, laquelle fut sanctionnée et devint en vigueur le 20 juin 1914, il est déclaré que les ouvrages et entreprises de la compagnie de chemin de fer Québec et Lac St-Jean sont des ouvrages d'utilité publique pour le Canada. Le chemin de fer devint de ce fait sujet aux dispositions de la Loi des chemins de fer du Canada.

La partie du chemin qui traverse les municipalités fut construite vers l'an 1883 et est maintenant exploitée comme partie du réseau des chemins de fer Nationaux du Canada.

Le premier pont sur la rivière Ste-Anne-de-la-Pérade, dans la paroisse de St-Raymond, fut construit vers l'an 1883. A la demande de la compagnie de chemin de fer Canadian Northern, la Commission des chemins de fer du Canada, en vertu de son ordonnance n° 25155, en date du 13 juillet 1916, autorisa ladite compagnie de chemin de fer à reconstruire ledit pont, tel qu'indiqué sur le plan daté du 15 juin 1916, versé au dossier de la Commission n° 27152. Ce plan pourvoyait à une poutre à double plaque avec un pilier au milieu du courant.

En vertu de l'ordonnance n° 26814, en date du 10 décembre 1917, émise à la suite d'une requête produite par la compagnie de chemin de fer Québec et Lac St-Jean, la Commission autorisa ladite compagnie à construire un nouveau pont sur la rivière Ste-Anne à St-Raymond, au lieu et place de la structure autorisée en vertu de l'ordonnance n° 25155, en date du 13 juillet 1916, tel qu'indiqué sur le plan n° 40305, daté du 4 décembre 1917, ainsi que sur les plans de la Dominion Bridge Company indiquant les tensions, versés au dossier de la Commission n° 27152. L'ordonnance n° 25155 fut par ce fait révoquée.

Le plan substitué auquel il est référé dans l'ordonnance n° 26814 pourvoyait à une seule poutre sans pilier au centre. Il appert que ce changement fut fait par le chemin de fer à la suite de plaintes des marchands de bois et d'un protêt notarié signifié le 30 mars 1917 par la municipalité de St-Raymond à l'encontre du premier plan qui pourvoyait à un pilier au milieu du courant.

Par son ordonnance n° 27277, en date du 1er juin 1918, la Commission autorisa la compagnie de chemin de fer Québec et Lac St-Jean à faire usage dudit nouveau pont.

Le premier pont ou structure érigée vers l'an 1883 avait une longueur totale de 227 pieds, et le nouveau pont a 215 pieds de long, donc douze pieds de moins que la première structure. Les deux culées en béton du nouveau pont, qui ont environ six pieds d'épais, ont été construites en face des culées en pierre du premier pont, ce qui a eu pour résultat le rétrécissement du chenal de la rivière de plusieurs pieds. Le niveau de la base de la voie fut élevé de quatre pieds et il a fallu élever le niveau du remblai du chemin de fer sur une distance de plusieurs centaines de pieds des côtés est et ouest du pont afin qu'il corresponde à l'élévation plus haute du pont. Postérieurement à l'année 1924, certaines parties du remblai et des voies du côté est du pont ont été rehaussées encore une fois d'au moins dix pouces.

La paroisse et le village de St-Raymond sont situés dans une vallée et bornés au nord par des montagnes à forte pente et au sud par des plateaux élevés de sable. La rivière Ste-Anne baigne à peu près le centre de cette vallée. Le rivage de la rivière est peu élevé ainsi que le terrain avoisinant. Le village est quelque peu plus élevé. A quelques centaines de pieds en amont, au nord du pont du chemin de fer, les eaux de la rivière Bras du Nord se déversent dans la rivière Ste-Anne. Le remblai du chemin de fer traverse cette région de basses-terres à angle droit près par rapport à la rivière Ste-Anne. Sur une certaine distance à l'est du pont le sommet du remblai est de 10 à 15 pieds plus élevé que le terrain avoisinant. Actuellement, il n'y a aucun ponceau ou ouverture à travers ce remblai, sauf à l'endroit du pont sur la rivière Ste-Anne. Autrefois, il y avait un ponceau ou une ouverture qui traversait le remblai du chemin de fer, mais un des témoins a déclaré que cette ouverture fut remplie il y a 30 ou 35 ans. Rien n'indique quelles étaient les dimensions de cette ouverture ou exactement quand, pourquoi ou par qui ladite ouverture fut remplie.

Cette partie de la rivière Ste-Anne qui passe à travers le village de St-Raymond a une largeur de deux à trois cents pieds. Elle est passablement sinueuse, à détours brusques et peu profonde. Dans certains de ces détours le chenal est rétréci par la présence d'îles. A environ deux milles en aval du pont, la rivière est endiguée sur l'emplacement du moulin de la News Pulp & Paper Company Limited, à la Chute Panet.

La requête et plainte des municipalités a été produite, je crois, à la suite de deux fortes inondations qui ont submergé certaines parties du village et de la paroisse, le 10 septembre 1924, et les 30 septembre et 1er octobre 1924. Cette dernière inondation fut la plus sérieuse, l'eau ayant atteint un plus haut niveau. Les rez-de-chaussées d'un nombre de bâtisses du village et de la paroisse ont été submergés. Ces inondations ont causé des dommages aux municipalités et des dégâts considérables aux terrains et propriétés d'un grand nombre de personnes habitant ces municipalités, et ces dommages et dégâts furent cause de pertes et d'inconvénients sérieux pour les intéressés.

A la suite de la réception de la requête et plainte des municipalités, la Commission fit faire, le 25 septembre 1925, une enquête à ce sujet sur les lieux par son ingénieur en chef adjoint d'alors, M. H. A. K. Drury, lequel était accompagné de M. C.-L. Savary, ingénieur du ministère des Terres et Forêts de la province de Québec. Ceux-ci ont chacun soumis à la Commission un rapport de leur enquête; le rapport de M. Savary était daté du 28 septembre 1925, celui de M. Drury, du 17 octobre 1925. M. Drury dans son rapport a déclaré qu'il était d'accord avec les conclusions de M. Savary.

Subséquemment, le chemin de fer obtint les services d'un ingénieur compétent en hydraulique pour faire enquête sur la situation. Au commencement de mai 1926, les services de la maison Walter J. Francis and Company ont été retenus et le chef de cette société, M. F. B. Brown, prit lui-même l'affaire en main. Ce dernier, dans le rapport qu'il soumit à la Commission et au chemin de fer, le 20 mai 1926, analysa la question bien à fond.

Tel que mentionné ci-dessus, une enquête fut aussi faite et un rapport, en date du 13 juillet 1928, fut soumis concernant les conditions d'inondation à St-Raymond, par M. Olivier Lefebvre, ingénieur en chef de la Commission des Eaux courantes de la province de Québec.

Pour cause de mortalité ou autres, aucun des ingénieurs qui ont soumis les rapports mentionnés ci-dessus n'a pu être présent à la récente instruction. Nous avons toutefois, leurs rapports auxquels il a été référé, et la teneur d'iceux a été discutée à l'instruction par les avocats des parties.

M. D. W. McLachlan, d'Ottawa, un ingénieur de grande réputation, possédant beaucoup d'expérience en matière hydraulique et dont les connaissances s'étendent à d'autres branches du génie, a été appelé comme témoin. A la suite d'un examen des conditions à St-Raymond durant l'été de 1944, et d'une étude approfondie de toutes les pièces et mémoires disponibles en rapport avec la question en litige, y compris des renseignements officiels sur les conditions pluviométriques et sur les courants des rivières, M. McLachlan a soumis un rapport au chemin de fer, daté du 16 octobre 1944. Une copie de ce rapport a été produite à la Commission lors de l'instruction. M. McLachlan a été interrogé et contre-interrogé longuement relativement à son rapport par les avocats du chemin de fer et des municipalités.

Il peut être dit en passant que les opinions énoncées dans les rapports des techniciens diffèrent peu relativement aux conditions d'inondation au cours de l'année 1924 et depuis. Ils sont tous d'accord en substance y compris M. McLachlan, sur la plupart des principaux points.

Un nombre considérable de citoyens du village et de la paroisse de St-Raymond ont rendu témoignage en faveur des municipalités. La plupart d'entre eux avaient demeuré à St-Raymond sans interruption durant un certain nombre d'années avant et depuis l'inondation de 1924, et avaient été des témoins oculaires des conditions d'inondation. Deux ou trois de ces témoins ont parlé des conditions depuis la construction du chemin de fer vers l'année 1883.

Le 9 novembre 1944, au cours de l'instruction, la Commission, accompagnée de son ingénieur en chef et des avocats et autres représentants des parties intéressées, s'est rendue à St-Raymond et a fait un examen sur les lieux du pont et

du remblai du chemin de fer et des deux ponts-routes à l'est du village, dont l'un est sur la rivière Ste-Anne et l'autre sur la rivière Bras du Nord. Un examen a aussi été fait de certaines parties du village et de la paroisse en question, ainsi que du village de la Chute Panet, où sont situées la digue et les usines de la News Pulp & Paper Company Limited.

La rivière Ste-Anne-de-la-Pérade est tributaire du fleuve St-Laurent, sur la rive nord, et se déverse dans le fleuve à environ 48 milles en amont de la ville de Québec. Elle prend source dans les Laurentides à 1576 pieds au-dessus du niveau de la mer, et est d'une longueur d'environ 75 milles. La superficie de drainage en amont du pont du chemin de fer, à St-Raymond, est d'environ 605 milles carrés. Les eaux de cette superficie se déchargent dans deux branches de la rivière, la branche Ste-Anne et la branche Bras du Nord, cette dernière étant la plus importante; l'égouttement des eaux d'environ 315 milles carrés de cette superficie se fait dans la rivière Bras du Nord, et de 290 milles carrés dans la branche nord-est de la rivière Ste-Anne. Les avocats des municipalités et du chemin de fer sont d'accord que la rivière n'est pas navigable.

Le niveau de l'eau en aval de l'usine d'énergie électrique, à la digue de la Chute Panet, est d'environ 407 pieds au-dessus du niveau de la mer. Le roc solide s'élève à une hauteur d'environ 428 pieds, et la crête de la digue est de 435 à 435.9 pieds au-dessus du niveau de la mer.

Le pont du chemin de fer sur la rivière Ste-Anne est à environ deux milles en amont de la digue à la Chute Panet; le village de St-Raymond est à 1.3 mille en amont du pont du chemin de fer et à 3.3 milles en amont de ladite digue.

Lorsque l'écoulement des eaux des terres est peu considérable, le niveau de la rivière se maintient à peu près à la hauteur de la crête de la digue de la Chute Panet. En amont de la digue le courant de la rivière est uniformément calme sur une distance d'environ 2.6 milles; ensuite, il y a des rapides à cause de la pente plus forte dans le lit de la rivière. Vis-à-vis du village de St-Raymond le bas niveau de l'eau est à environ 5 pieds plus haut que la crête de la digue à la Chute Panet, et à un mille plus loin en amont, le niveau est à environ 10 pieds plus haut que la crête de la digue.

Lorsque l'eau est à une élévation extrême, telle que l'élévation du 30 septembre et du 1er octobre 1924, le niveau est à peu près comme suit:

A la Chute Panet—à environ 7.5 pieds au-dessus de la crête de la digue.
1 mille en amont—à environ 13 pieds au-dessus de la crête de la digue, ou 12.6 pieds au-dessus du bas niveau de l'eau.

Juste en aval du pont du C.N.R.—à environ 15.2 pieds au-dessus de la crête de la digue, ou 14.5 pieds au-dessus du bas niveau de l'eau.

Juste en amont du pont du C.N.R.—à environ 17 pieds au-dessus de la crête de la digue, ou à environ 16.3 pieds au-dessus du bas niveau de l'eau.

A St-Raymond—à environ 17.4 pieds au-dessus de la crête de la digue, ou 12 pieds au-dessus du bas niveau de l'eau.

Les données ci-dessus indiquent qu'il y a beaucoup de variations dans le niveau de l'eau de cette rivière à différentes périodes de débit.

Le village et la paroisse de St-Raymond subissent deux sortes d'inondations; l'une est causée par la débâcle des glaces alors que la partie de la rivière où passe le courant le plus rapide est dégagée et que la partie où le courant est moindre est encore recouverte de glace; l'autre est causée par des pluies estivales exceptionnelles qui contribuent à élever le niveau de l'eau à un degré beaucoup plus haut que lorsque l'inondation est causée par la fonte des neiges ou la débâcle des glaces.

L'inondation causée par la débâcle des glaces submerge des parties du village et de la paroisse lorsque l'écoulement des eaux de la rivière atteint environ 16.000 pieds cubes à la seconde, comme la chose s'est produite vers le 19 mars

1936. L'inondation causée par des pluies estivales exceptionnelles submerge des parties du village et de la paroisse lorsque l'écoulement des eaux de la rivière atteint 30,000 pieds cubes à la seconde ou plus. L'inondation du 1er octobre 1924 a été causée par un débordement de la rivière à St-Raymond qui a atteint une vitesse estimée par M. Lefebvre à 39,000 p. c. s., par M. Brown à 38,000 p. c. s. et par M. McLachlin à 38,700 p. c. s.

La superficie du terrain qui s'égoutte dans la rivière Ste-Anne-de-la-Pérade est plutôt large que longue avec pente rapide (1,158 pieds sur une distance de 35 milles), et il y a peu de lacs pour modifier l'écoulement. La surface de cette superficie est composée en grande partie de roc et de sable. Des relevés faits par un ingénieur indiquent que la pluie qui tombe sur les parties les plus élevées n'atteint St-Raymond, dans sa marche d'écoulement vers la rivière, que 24 heures plus tard.

Il tomba environ 4.11 pouces de pluie dans le territoire environnant la rivière Ste-Anne durant les 24 heures antérieures au plus fort de l'inondation du 1er octobre 1924 et l'écoulement fut de 38,700 p. c. s. L'inondation de 1924 fut causée par des conditions anormales et exceptionnelles telles que l'on ne pourrait s'attendre à voir se répéter avant un bon nombre d'années. Monsieur McLachlan déclare que l'on ne peut s'attendre à une chute de pluie de 4.11 pouces en 24 heures à certains endroits de la province de Québec qu'environ une fois en 57 ans, si les rapports pour les années passées peuvent servir de guide pour l'avenir.

Deux autres inondations se sont produites à St-Raymond depuis celle du 1er octobre 1924, une vers le 21 juillet 1930, et l'autre le 27 mai 1943. Bien que le niveau de l'eau lors de ces dernières inondations ne se soit pas élevé à celui de 1924, il a toutefois atteint des proportions considérables. En 1943, le niveau de l'eau a atteint une élévation de 448.9 pieds au-dessus du niveau de la mer, tandis que le 1er octobre 1924, le niveau avait atteint 452.2 pieds. L'inondation de 1930 n'a pas été aussi sérieuse que celle de 1943. Ces inondations ont causé des dommages considérables aux terrains et aux propriétés des deux municipalités et les propriétaires, en particulier, des terrains qui ont été submergés ont dû éprouver de grands inconvénients et subir des pertes considérables.

Selon le dossier les inondations de 1924, de 1930 et de 1943 ont été les plus importantes qui se soient produites dans le village et la paroisse de St-Raymond. D'après les témoignages de citoyens des endroits en question, j'ai la certitude, toutefois, qu'il s'est produit d'autres débordements de la rivière à St-Raymond depuis 1924, outre la crue vernale ordinaire de la rivière. Bien qu'en ces occasions certains dommages aient été causés, ils ont été moindres que lors des grandes inondations mentionnées ci-dessus.

En temps d'inondation la surface de la rivière Ste-Anne, à partir d'environ un demi-mille en amont du village de St-Raymond jusqu'à environ 2 milles en aval dudit village, a une apparence bizarre, semblable à celle d'un lac à fond plat, ce qui diffère beaucoup de la topographie de la vallée en amont et en aval. La rivière en suivant son cours à travers cette superficie se meut comme un courant alluvial. Elle se remplit et se trace plusieurs nouveaux chenaux au flux et reflux des eaux. En aval de cette superficie sous l'apparence d'un lac, le régime change. Au niveau d'inondation la rivière reprend la configuration dans laquelle ses bords la maintiennent. Ce n'est plus un courant alluvial sinueux, son débit est rapide et sa surface de section est substantiellement contractée.

J'ai fait mention ci-dessus d'une inondation survenue à St-Raymond le ou vers le 19 mars 1936. Pour expliquer ce qui peut se produire dans cette région, même durant les débâcles du printemps, ou lors des inondations produites par la rupture des glaces le printemps, il semblerait opportun d'ajouter quelque chose à ce sujet. Le 24 mars 1936, la Commission recevait de la part de plusieurs propriétaires de terres le long de la rivière à St-Raymond une plainte déclarant qu'ils avaient souffert des dommages causés par l'inondation et alléguant que le

chemin de fer en était responsable. On demandait aussi à la Commission d'envoyer un ingénieur à St-Raymond pour faire enquête, ce qui a été fait sur les lieux par un des ingénieurs de la Commission, le 16 avril suivant. Le rapport de l'ingénieur se lit en partie comme suit:

"Il appert qu'un embâcle s'est produit en amont et en aval du pont-route, près de l'église, particulièrement à l'arrière de l'hôtel de ville. Bien que les glaces aient été en dérive sur la rivière Ste-Anne à cet endroit, la glace sur la rivière Bras du Nord était encore solide, ainsi qu'au pont du chemin de fer. Il appert que la glace s'est répandue sur les basses-terres au nord de la rivière en aval du pont jusqu'à une hauteur de quatre et cinq pieds, touchant le dessous du pont-route. Le niveau de l'eau était alors à 14 pouces de l'assise du pont, ou à l'élévation 452.55, ce qui est presque le niveau atteint lors du débordement de 1924, lequel était de 452.2. Au pont du chemin de fer la glace était solide et l'eau ne coulait pas. La glace s'élevait à 10'9" de la base du rail, soit à l'élévation 444.65, ce qui est 7.45' plus bas que l'élévation de l'eau du côté nord du pont lors du débordement exceptionnel de 1924, laquelle avait alors été de 452.1. A la digue de la News Pulp & Paper Company Limited à la Chute Panet, il appert que l'eau a atteint l'élévation 440, ou 4.9 pieds au-dessus de la passe-déversoir et 2.9' plus bas que l'élévation lors de l'inondation de septembre 1924. La hausse de l'écluse se trouvait à l'élévation 438.25, c'est-à-dire 3.15 pieds au-dessus de la passe-déversoir qui est à l'élévation 435.10".

"Les conditions qui existaient le 19 mars n'étaient pas dues à l'ouverture dans le remblai au pont du chemin de fer de l'autre côté de la rivière, mais à la débâcle des glaces dans la rivière Ste-Anne, au moment où la glace au sud de l'hôtel de ville, entre ce dernier endroit et le pont du chemin de fer et en aval de celui-ci, ainsi que dans la rivière Bras du Nord, était encore solide et qu'elle n'avait pas encore commencé à se déplacer. Il appert que le niveau de l'eau sous le pont n'a jamais dépassé le niveau qu'a atteint la glace le 20 mars. Actuellement le niveau de l'eau sous le pont est 19.6 pieds plus bas que la base du rail, ce qui équivaut à l'élévation 435.8, soit 6.2 pieds plus bas que le niveau supérieur normal de 442.0".

Ce rapport et les constatations de l'ingénieur de district de la Commission n'ont pas été contestés. Je crois qu'il est évident que les causes de l'inondation du 19 mars 1936 n'étaient d'aucune façon attribuables au chemin de fer.

Le débouché du premier pont du chemin de fer, au bas niveau ordinaire de l'eau était d'une superficie, en travers, de 1,930 pieds carrés, et au haut niveau ordinaire, de 4,133 pieds carrés. La nouvelle structure érigée en 1917 ou 1918 pourvoyait à un débouché, au bas niveau ordinaire, de 1,908 pieds carrés, et au haut niveau ordinaire, de 3,968 pieds carrés. Le chemin de fer, dans sa réponse datée du 3 juillet 1925, à la requête des municipalités au sujet de la contraction de la superficie sous le pont déclare ce qui suit: "Vous remarquerez que le niveau de l'eau, à cause de la restriction de la superficie, est un dixième de pied plus élevé au bas niveau, tandis qu'au haut niveau extrême le niveau de l'eau est environ huit-dixièmes de pied plus élevé." Le bas niveau ordinaire est approximativement à 437.00 pieds au-dessus du niveau de la mer, et le haut niveau ordinaire l'est à 442.00 pieds. Lorsque l'inondation du 1er octobre 1924 était à son fort, l'eau s'éleva à 450.16 pieds du côté sud de la voie ferrée, et jusqu'à un maximum 452.1 pieds du côté nord. La superficie actuelle en travers du débouché du pont est de 5,631 pieds carrés à l'élévation enregistrée lors de l'inondation du 1er octobre 1924. Ce fut cependant une inondation extraordinaire et anormale. Le niveau de l'eau au pont s'est élevé jusqu'à une hauteur de huit ou neuf pieds au-dessus du haut niveau ordinaire.

Le chemin de fer insiste fortement dans sa prétention que la superficie en travers, du débouché du nouveau ou présent pont est conforme aux meilleures normes du génie. A l'appui de cette affirmation, M. McLachlan déclare que les

dimensions recommandées par diverses autorités reconnues pour une ouverture de pont sur un cours d'eau du genre de celui qui nous intéresse présentement, sont les suivantes:

La formule de Talbut pour superficies de drainage de plus

de 400 milles carrés en territoire montagneux.....	5,020 p. c.
Renseignements de Dun relatifs au Missouri.....	4,960 p. c.
Renseignements de Dun relatifs au Connecticut.....	4,925 p. c.
Renseignements de Dun relatifs à la Tonawanda Creek..	5,070 p. c.
Formule de la 'Engineering News'.....	4,520 p. c.

Tel que mentionné ci-dessus la superficie actuelle, en travers, du débouché du pont du chemin de fer est de 5,631 pieds carrés lorsque l'eau est au niveau tel qu'enregistré au moment de l'inondation du 1er octobre 1924. D'après ce fait et en considération des recommandations de la part des autorités citées ci-dessus, M. McLachlan déclare être d'opinion que le débouché actuel du présent pont est amplement suffisant. La preuve n'indique pas si les recommandations des autorités citées ci-dessus sont basées sur les conditions du haut niveau ordinaire ou sur les conditions anormales et extraordinaires comme celles qui se sont présentées lors de l'inondation du 1er octobre 1924. Cette preuve, par conséquent, n'est pas d'une grande utilité. Mais vu ce qui a été mentionné plus tard au sujet de la double influence de la présence du nouveau pont et du remblai du chemin de fer, relativement au refoulement de l'eau, ce point est de moindre importance.

Tel que déjà mentionné, le village de St-Raymond est exposé à des inondations partielles à cause de la crue des eaux, qu'il y ait de la glace solide ou non dans la rivière. Ces inondations, quand il y a de la glace dans la rivière, se produisent lorsque l'eau atteint une vitesse d'environ 16,000 p.c.s., et que son niveau est à environ 440 pieds à la digue de la Chute Panet, et à environ 444.6 pieds au pont du chemin de fer, alors que la surface de l'eau s'élève rapidement d'un point à environ 1,000 pieds en amont du pont du chemin de fer jusqu'au village de St-Raymond, où le niveau de l'eau atteint même quatre pieds au-dessus du niveau des rues, comme la chose s'est produite les 19 et 20 mars 1936.

Un débordement d'une rivière libre comme celui survenu le 1er octobre 1924 atteint St-Raymond lorsque le courant excède 30,000 p.c.s., et lorsqu'il atteint 38,700 p.c.s. environ quatre pieds d'eau submergent les parties basses du village, et six à sept pieds d'eau submergent les terrains plats entre la rivière Bras du Nord et la rivière Ste-Anne, vis-à-vis St-Raymond. La base du rail sur une partie des voies du chemin de fer à l'est du pont est à l'élévation 448.2, à l'endroit le plus bas. Durant l'inondation du 1er octobre 1924, l'eau s'éleva au-dessus du niveau des voies. Il y avait considérablement d'eau au-dessus de la voie, dont le courant, d'après M. McLachlan, était de 5,000 p.c.s. au plus fort de l'inondation, alors qu'une partie du remblai du chemin de fer a été emportée. L'on peut se faire une idée de l'importance des dommages causés aux voies et au remblai du chemin de fer à cette occasion du fait que le coût de rétablissement de la voie et du remblai à la condition qu'ils étaient auparavant s'est élevé à \$4,900. Il s'est produit des conditions semblables lors des fortes inondations du 21 juillet 1930 et du 27 mai 1943, mais ces inondations ont été moindres et, naturellement, les dommages causés aux voies et au remblai ont été moins élevés.

Il est bien évident qu'à la suite de l'affouillement d'une partie du remblai du chemin de fer lors des principales inondations, le niveau de l'eau dans le village et dans la paroisse a baissé.

Le chemin de fer dans sa requête du 9 juillet 1930 a admis que le rétrécissement du chenal de la rivière, dû à la présence du remblai, éleva le niveau de l'eau de 2.1 pieds au-dessus du pont lors de l'inondation du 30 septembre et

du 1er octobre 1924. Monsieur McLachlan déclare que la présence du pont et du remblai du chemin de fer a été cause de l'élévation du niveau de la rivière de 1.8 pied ou d'environ 22 pouces à 1,800 pieds près en amont du pont du chemin de fer. Il déclare aussi que ce refoulement des eaux de 1.8 pied diminue en amont du pont et qu'au village de St-Raymond l'effet est moindre que ne l'indiquent les données. A ce sujet, M. McLachlan exprime ses vues d'une autre façon en disant que l'enlèvement complet du pont et du remblai du chemin de fer aurait fait baisser le niveau de l'eau de cette rivière à St-Raymond, au point le plus fort de l'inondation d'environ seulement 1.8 pied.

Je crois que l'on peut considérer que la présence du pont et du remblai du chemin de fer ont ensemble contribué à l'élévation du niveau de l'eau de près de deux pieds au point culminant de l'inondation du 1er octobre 1924. Naturellement un abaissement du niveau de l'eau apporte une diminution correspondante de la superficie submergée.

Il est d'intérêt de mentionner quelque chose relativement à la superficie des terres du village et de la paroisse de St-Raymond qui ont été submergées lors de l'inondation du 1er octobre 1924, à son point culminant. Ce que je cite à ce sujet est tiré des calculs faits par M. McLachlan et peut, je crois, être accepté comme à peu près conforme aux faits.

La superficie des terres inondées en amont du pont du chemin de fer peut être divisée en deux parties, celle au nord de la rivière Ste-Anne, qui se trouve dans la paroisse de St-Raymond et qui est composée en grande partie de terres de culture et de pâturage, et celle au sud de la rivière Ste-Anne, qui se trouve dans les limites du village de St-Raymond, dont une grande partie est aussi composée de terres en culture.

L'on estime que la partie de la paroisse de St-Raymond, qui a été inondée à l'élévation 452.1, comprend une superficie de 562 acres, dont 65 peuvent être considérées comme ayant été recouvertes de deux pieds d'eau. Le sol dans les limites du village de St-Raymond qui a été submergé comprend, d'après estimation, 148 acres, dont 23 peuvent être considérées comme ayant été submergées de deux pieds de profondeur. Il n'est pas possible de dire avec certitude raisonnable quelle proportion de la superficie inondée se trouve dans la partie construite du village.

D'après les calculs de M. McLachlan, si le pont et le remblai du chemin de fer avaient été inexistants le 1er octobre 1924, la superficie inondée n'aurait été que 98% de 88 acres, soit 79 acres. La superficie inondée en amont du pont du chemin de fer aurait mesuré 632 acres au lieu de 710 acres.

Il n'y a pas lieu de faire mention de la superficie inondée en aval du pont du chemin de fer. Je ne crois pas que le pont et le remblai ne puissent avoir aucune influence matérielle sur le niveau de l'eau ou sur la superficie du terrain inondé, à aucun endroit en aval desdits pont et remblai.

L'interrogatoire des témoins des municipalités indique qu'il y a eu des inondations à St-Raymond antérieurement à 1917. Ces débordements, toutefois, ont été moins sérieux que les inondations de rivière libre survenues depuis. Je crois que cette condition est attribuable en grande partie au rehaussement du remblai et au rétrécissement du chenal de la rivière d'environ 12 pieds lors de la reconstruction du pont, ce qui a l'effet au moment des fortes inondations, de retenir l'eau en amont, au nord du remblai et du pont, à un niveau plus élevé, causant ainsi l'inondation d'une plus grande superficie dans les municipalités.

L'on doit remarquer que d'autres facteurs locaux ont, en quelque sorte quelque peu contribué à l'inondation de 1924 et à d'autres. Un grand nombre de coffres et de piliers sont présents dans la rivière, dont deux ou trois sont en amont, et le reste en aval du pont du chemin de fer. Ces coffres ainsi que la digue à la Chute Panet sont en partie responsables des conditions d'inondation à St-Raymond. L'on estime que ces deux facteurs ont été cause de l'élévation

du niveau de l'eau de 1·50 pied ou 18 pouces, à un point à 1800 pieds en amont du pont du chemin de fer, lors de l'inondation du 1er octobre 1924. La présence de ces coffres dans la rivière paraissent contribuer le plus sérieusement à ces conditions.

La compagnie News Pulp & Paper, propriétaire de la digue, et les propriétaires de ces coffres (quels qu'ils soient) ne sont pas des parties en cause et rien de ce qui est ici mentionné ne doit être interprété comme affectant ou pouvant être préjudiciable aux droits et obligations, s'il en existe, de ces personnes ou d'aucune d'entre elles. A tout événement, je ne crois pas que nous ayons droit de traiter de la situation en ce qui concerne ces personnes.

D'après la preuve et les pièces au dossier, je ne crois pas que la présence du pont et du remblai du chemin de fer puissent affecter beaucoup, si c'est le cas, le haut niveau de l'eau lors des dégels l'hiver ou le printemps, lorsqu'il y a amoncellement de glace dans la rivière.

L'ordonnance de la Commission n° 38473, en date du 27 novembre 1926, dont le chemin de fer demande la révocation, enjoint au chemin de fer de pratiquer une ouverture dans le remblai est, à l'approche du pont sur la rivière Ste-Anne, dans la paroisse de St-Raymond, d'une longueur de deux cents pieds environ, et dont la base devra être à l'élévation 430 près. L'exécution des travaux prescrits par ladite ordonnance nécessiterait l'excavation d'un chenal d'environ un demi mille de long, 210 pieds de large et de 10 pieds de profondeur. D'après le rapport de M. Olivier Lefebvre, ingénieur en chef de la Commission des Eaux courantes de la province de Québec, en date du 13 juillet 1928, un tel projet comporterait l'excavation de 207,000 verges cubes de terre. Je crois que ces chiffres sont à peu près exacts.

En 1930, le chemin de fer a évalué le coût des travaux prescrits par l'ordonnance à environ \$260,000, et tenant compte de l'intérêt, de la dépréciation et de l'entretien additionnel, le coût qu'aurait à assumer le chemin de fer s'élèverait à \$20,000 près par année. Monsieur McLachlan évalue le coût actuel d'exécution de tels travaux à \$359,000. Il a basé ses calculs sur les prix unitaires soumis par le chemin de fer. Quelques-uns de ces prix ont été critiqués par l'avocat des municipalités et jugés excessifs. Je crois, cependant, que le montant peut être considéré comme une évaluation approximative du coût aujourd'hui. Si ces travaux étaient exécutés, cela n'apporterait, d'après les calculs d'un ou de quelques-uns des ingénieurs, qu'un abaissement d'élévation du niveau de l'eau à St-Raymond d'environ 1·19 pied ou 14 pouces lors de conditions telles que celles du 1er octobre 1924.

A part la question du coût du projet prescrit par l'ordonnance n° 38473, en date du 27 novembre 1926, il y a encore une question assez sérieuse, à savoir: à cause de la nature et du comportement de cette rivière au moment des inondations, je suis convaincu que ce chenal de dix pieds de profondeur se remplirait en partie de limon, de sable et de gravier emporté par le courant, et l'on estime que ce fait aurait pour résultat de rendre l'ouverture vingt-cinq pour cent moins efficace qu'elle ne l'aurait été après avoir été construite.

L'avocat du chemin de fer prétend, premièrement, que la Commission n'avait pas la compétence ou le pouvoir de rendre l'ordonnance dont on se plaint et, deuxièmement, que ladite ordonnance n'était pas équitable même si c'eût été de la compétence ou du pouvoir de la Commission de rendre telle ordonnance.

Je ne crois pas que l'amélioration des conditions d'inondation dans les municipalités à laquelle l'on pourrait raisonnablement s'attendre justifierait la dépense considérable qu'entraîneraient la mise à exécution et l'entretien des travaux que le chemin de fer a reçu l'ordre d'exécuter par l'ordonnance de la Commission n° 38473. En conséquence, je révoquerais l'ordonnance.

Vu la décision à laquelle j'en suis arrivé, il n'y a pas nécessité maintenant de dire quoi que ce soit sur la première prétention du chemin de fer. Une question semblable, toutefois, va se présenter plus tard.

Il reste maintenant à considérer si une autre ordonnance devrait être émise en rapport avec la requête des municipalités, et quelle devrait en être la teneur.

L'avocat du chemin de fer prétend que lors de la construction et de la reconstruction du pont et du remblai, la compagnie de chemin de fer Québec et Lac St-Jean ainsi que le Canadien-National ont observé toutes les exigences de la Loi; qu'ils ont fait exactement ce que la Loi leur permettait et ordonnait de faire, et qu'en conséquence la Commission, dans les circonstances, n'avait pas la compétence ou le pouvoir d'émettre une ordonnance enjoignant au chemin de fer ou à ses prédécesseurs en droit de pratiquer une ou des ouvertures dans le remblai afin d'alléger l'inondation des terres et des propriétés dans les municipalités; mais que si la Commission devenait convaincue que de fait cette partie du chemin de fer en question n'est pas convenable à la circulation des trains et qu'elle présente même des risques pour le public voyageur, il ne pourrait y avoir d'objection valable à ce qu'une ordonnance soit émise en raison de telles conditions, en vue d'apporter une amélioration.

Aucune preuve n'est offerte indiquant que lors de la construction du pont et de la partie du remblai et du chemin de fer en question, la compagnie de chemin de fer Québec et Lac St-Jean ait en aucune manière fait défaut d'observer ou de remplir toutes les exigences de la Loi, ni qu'il y ait eu négligence ou manquement au devoir de la part de cette compagnie ou du Canadien-National au cours de la construction de cette ligne de chemin de fer ou en tout ce qui a été fait jusqu'au temps de la reconstruction du pont et du rehaussement du remblai en 1917 ou 1918.

A défaut de telle preuve, nous devons conclure qu'il n'y a pas eu de négligence dans l'exécution des travaux relatifs à la construction originelle ou dans tout ce qui a été fait depuis, c'est-à-dire jusqu'au temps mentionné, et que les dommages, s'il y en a eu, ne sont survenus qu'à la suite de l'exercice raisonnable de droits conférés auxdits chemins de fer. Voir—le ministère de l'Agriculture du Canada v. le chemin de fer Grand Tronc, 23 C.R.C. 77.

La reconstruction du pont et le rehaussement du remblai ont eu, toutefois, l'effet, tel que mentionné ci-dessus, de refouler et de retenir l'eau en amont, au nord du remblai et du pont, à un niveau plus élevé lors des grandes inondations et, par conséquent, de causer des inondations et des dommages plus considérables dans les municipalités. Cet effet constitue, je crois, le principal motif de plainte de la part des municipalités en ce qui concerne le chemin de fer.

L'avocat des municipalités se base principalement sur les articles 268 et 269 de la Loi des chemins de fer, et plus particulièrement sur l'article 269.

En vertu de l'article 268 de la Loi des chemins de fer, la compagnie doit, en construisant le chemin de fer, "ménager un débouché suffisant au drainage et à l'écoulement des eaux, ou à amener l'approvisionnement d'eau, et afin que le drainage, naturel ou artificiel, ou l'approvisionnement d'eau, existant alors sur ces terres, ne soit pas obstrué ou ralenti par le chemin de fer."

L'article 269 stipule que,

"Chaque fois:

- (a) qu'un préjudice est causé à ces terres par suite de l'insuffisance du drainage le long, en travers ou en dessous du chemin de fer pour l'écoulement des eaux de ces terres; ou
- (b) qu'une municipalité ou un propriétaire foncier désire obtenir des moyens de drainage, ou le droit de poser des conduites d'eau ou autres tuyaux, provisoirement ou à demeure, en travers, le long ou en dessous du chemin de fer ou des ouvrages ou terrains de la compagnie;

la Commission, sur requête ou plainte de la municipalité ou du propriétaire foncier . . . peut ordonner . . . à la compagnie de construire ces voies de drainage ou de poser ces conduites d'eau, . . . ”

Et en vertu de l'alinéa 2 de l'article 269, il est prévu que la Commission peut “à sa discrétion, régler par ordonnance de quelle manière, à quel endroit à quelle époque, par qui et à quelles conditions peuvent s'effectuer ce drainage ou la pose de ces conduites d'eau, leur construction et leur entretien . . . ”

Je suis porté à croire, d'après les faits et circonstances ici présents, que la Commission aurait l'autorité en vertu des articles 268, 33(2) et 34(a) et (b) de la Loi des chemins de fer d'émettre une ordonnance apportant un redressement aux requérants. Mais il semble, toutefois, évident que la Commission a ample autorité, en vertu de l'article 269 de la Loi, d'émettre une telle ordonnance.

Des dommages sont causés à certains terrains dans les municipalités à cause de l'insuffisance d'écoulement sous l'emprise du chemin de fer. Les municipalités désirent que des mesures soient prises pour le drainage de ces terres par l'écoulement des eaux sous la voie ferrée, et elles ont, de fait, présenté une requête et une plainte en conséquence.

Les municipalités et les propriétaires fonciers ont droit, je crois, à un redressement des conditions causées jusqu'à un certain point par les ouvrages du chemin de fer.

Bien que je ne soumette aucune recommandation à cet effet, je tiens à dire que M. McLachlan, dans son rapport, a soumis un moyen d'agrandir de 2,000 pieds carrés l'ouverture dans le remblai du chemin de fer. Ce projet comprend quatre ouvertures de 50 pieds, ce qui donnerait un espace libre de 200 pieds de long et de 10 pieds de profondeur lors d'une inondation. Aucune excavation en forme de prime n'est projetée dans ce plan. L'on calcule que s'il était exécuté, ce projet détournerait un courant d'eau d'environ 10,700 p.c.s. d'ailleurs lors d'une inondation au plus haut point, et le coût en est évalué à \$120,000.

À l'audition, l'avocat du chemin de fer déclara, au cours de sa plaidoirie, que le chemin de fer avait décidé, afin de prévenir l'affouillement de son remblai et de ses voies lors des inondations et afin d'éviter des frais de réparation, d'installer un chevalet en bois créosoté de 144 pieds avec espaces libres de douze pieds, du côté est du pont, entre le bras ouest de la voie en Y et le pont, de réduire le remblai sous le chevalet à peu près au niveau du terrain avoisinant et d'élever les voies afin d'éliminer l'affaissement actuel.

Depuis l'instruction de la cause, les chemins de fer ont soumis des plans du chevalet et des travaux projetés pour l'approbation de la Commission, mais nous n'avons pas encore disposé de la requête concernant ces plans.

L'avocat du chemin de fer a appuyé fortement sur le fait que les travaux que projette le chemin de fer n'étaient pas une suite à la requête ou à l'audience; il a déclaré que c'était un projet qui, dans le cours ordinaire de l'exploitation du chemin de fer, eut été entrepris à tout événement, et qu'il était exécuté pour assurer la sécurité des trains et pour éliminer complètement le danger d'affouillement du remblai à l'avenir.

Il n'y a aucun doute que cette partie du remblai et du chemin de fer devint, lors des grandes inondations, peu sûre pour l'exploitation des trains, ainsi que pour le public voyageur. En effet, lors de ces inondations, la circulation des trains a dû être suspendue complètement jusqu'à ce que les eaux se soient retirées et que le remblai et les voies aient été réparés. L'on doit, toutefois, mentionner qu'aucun accident n'est survenu sur le chemin de fer à la suite de ces inondations.

La superficie en travers du chevalet projeté est à peu près de mêmes dimensions que la partie la plus considérable de remblai emportée au cours de l'inondation la plus forte. Pour les fins de sécurité seulement, je crois que ceci est le moins qui puisse être exigé.

L'élévation du terrain sur le site du chevalet projeté est d'environ 440 pieds au-dessus du niveau de la mer. Une telle ouverture donnerait un espace vertical libre d'environ dix pieds au cas d'inondations.

Les travaux de la nature de ceux que projette le chemin de fer constitueraient, je crois, un projet d'ordre pratique et pourraient être exécutés à un coût raisonnable. Je suis, toutefois, d'opinion que la longueur du chevalet projeté, soit 144 pieds, ne pourvoirait pas à une ouverture suffisante sous la voie pour faire face à la situation qui se présente ici.

Après mûre considération de tout ce qui nous a été soumis, j'ordonnerais au chemin de fer de pratiquer une ou des ouvertures dans le remblai sous ses voies au moyen de l'érection d'un chevalet en bois créosoté, avec tablier revêtu de ballast, dont les montants devront être espacés de pas moins de douze pieds, du côté est du pont, entre le bras ouest de la voie en Y et le pont; le remblai sous le chevalet devant être réduit à environ le même niveau que le terrain avoisinant. Le chemin de fer devra soumettre des plans pour l'approbation d'un ingénieur de la Commission.

Ceci, moins l'espace pris par les piliers du chevalet, laisserait des ouvertures dont l'ensemble représenterait une longueur d'environ deux cents pieds pour le libre passage de l'eau durant les inondations.

La situation créée dans les municipalités intéressées résulte de la présence du chemin de fer jusqu'au point déjà mentionné. Le chemin de fer, pour ses propres fins, a décidé d'ériger un chevalet de 144 pieds et d'enlever le remblai sous ledit chevalet. Vu les faits et les circonstances ici présents, je mettrai tous les frais de construction et d'entretien à la charge du chemin de fer.

Le 21 février 1945.

J. A. CROSS.

J'agrée, HUGH WARDROPE,
G. A. STONE.

ORDER No. 65785

In the matter of the application of the Canadian National Railways for an Order rescinding Order No. 38473, dated 27th November, 1926, made pursuant to the application of the Village and Parish of St. Raymond, in the County of Portneuf and Province of Quebec, for an Order directing the Canadian National Railways to construct culverts on their railway (Quebec & Lake St. John) at each end of the bridge over Ste. Anne River, in the said Parish of St. Raymond; and

Review and reconsideration of the said Order No. 38473, dated 27th November, 1926, and rehearing of the said application of the Village and Parish of St. Raymond.

File No. 27152

TUESDAY, the 27th day of February, A.D. 1945.

J. A. CROSS, K.C., *Chief Commissioner.*
HUGH WARDROPE, *Asst. Chief Commissioner.*
G. A. STONE, *Commissioner.*

Upon hearing the application at the sittings of the Board held at Quebec on the 8th, 9th, 10th, 15th, and 16th days of November, 1944, in the presence of Counsel for and representatives of the Canadian National Railways, the Village and Parish of St. Raymond, and the Department of Roads of the Province of Quebec, and what was alleged—

It is ordered:

1. That the said Order No. 38473, dated 27th November, 1926, be, and it is hereby, rescinded.

2. That the Canadian National Railways be, and they are hereby, directed to construct and maintain, at their own expense, an opening or openings in the railway embankment under their tracks by the construction of not less than two hundred and sixteen feet of ballast deck creosoted timber pile trestles, with bents not less than twelve-foot centres, on the east side of the bridge between the west leg of the wye and the bridge over Ste. Anne River, in the Parish of St. Raymond, in the County of Portneuf and Province of Quebec: the embankment under the trestle to be removed to the approximate level of the adjacent ground.

3. That plans of the work hereby ordered be filed for the approval of an Engineer of the Board.

J. A. CROSS,

Chief Commissioner.

ORDER No. 65822

In the matter of the application of the Abitibi Navigation Company, Limited, hereinafter called the "Applicant," for a licence under Section 10 of The Transport Act, 1938:

File No. 42076.18

THURSDAY, the 15th day of March, A.D. 1945.

J. A. CROSS, K.C., *Chief Commissioner.*

HUGH WARDROPE, *Assistant Chief Commissioner.*

G. A. STONE, *Commissioner.*

F. M. MACPHERSON, *Commissioner.*

Upon the report and recommendation of the Assistant Director, Traffic Department of the Board—

It is ordered: That Licence Number C.T.C. (W.T.) 122 be issued to the Applicant for the period of one year commencing on the 15th day of January, 1945, licensing the following ship:

Vessel Name	Official Registry No.	Gross Tonnage
Wahcondah	102577	1,575

to transport goods by water between all ports or places in Ontario, on lakes Ontario, Erie, Huron (including Georgian Bay), and Superior, and their connecting waters, including the St. Lawrence River and its tributaries as far seaward as the west end of the Island of Orleans.

J. A. CROSS,

Chief Commissioner.

ORDER No. 65827

In the matter of the application of Canada Steamship Lines Limited and The Northern Navigation Company Limited (a wholly owned subsidiary operated as "Northern Navigation Division") for a licence under Section 10 of The Transport Act, 1938:

File No. 42076.4.1

SATURDAY, the 17th day of March, A.D., 1945.

J. A. CROSS, K.C., *Chief Commissioner.*

HUGH WARDROPE, *Assistant Chief Commissioner.*

J. A. STONEMAN, *Commissioner.*

Upon the recommendation of the Assistant Director, Traffic Department of the Board—

It is ordered: That Licence Number C.T.C. (W.T.) 123 be issued in the name of Canada Steamship Lines Limited and The Northern Navigation Company Limited (a wholly owned subsidiary operated as "Northern Navigation Division") licensing, for the period of one year commencing on the 15th day of January, 1945, the following ships, namely: .

Vessel Name	Official Registry No.	Gross Tonnage
<i>Cayuga</i>	122219	2,196
<i>Hamonic</i>	122553	5,265
<i>Kingston</i>	111654	2,925
<i>Noronic</i>	134014	6,905
<i>Quebec</i>	153450	7,016
<i>Rapids Prince</i>	130418	1,314
<i>Richelieu</i>	150828	5,528
<i>Saguenay</i>	130526	2,777
<i>St. Lawrence</i>	153438	6,328
<i>Tadoussac</i>	153447	7,013

to transport passengers and/or goods by water between all ports or places in Canada on Lakes Ontario, Erie, Huron (including Georgian Bay), and Superior, and their connecting waters, including the St. Lawrence River and its tributaries as far seaward as the west end of the Island of Orleans.

J. A. CROSS,

Chief Commissioner.

ORDER No. 65828

In the matter of the application of Canada Steamship Lines Limited and The Northern Navigation Company Limited (a wholly owned subsidiary operated as "Northern Navigation Division"), hereinafter called the "Applicant," for a licence under Section 10 of The Transport Act, 1938:

File No. 42076.4.2

MONDAY, the 19th day of March, A.D. 1945.

J. A. CROSS, K.C., *Chief Commissioner.*

HUGH WARDROPE, *Assistant Chief Commissioner.*

J. A. STONEMAN, *Commissioner.*

Upon the report and recommendation of the Assistant Director, Traffic Department of the Board—

It is ordered: That Licence Number C.T.C. (W.T.) 124 be issued to the Applicant licensing, for the period of one year commencing on the 15th day of January, 1945, the following ships:—

Vessel Name	Official Registry No.	Gross Tonnage
Acadian	133533	1,686
Barrie	151045	1,824
Battleford	148134	2,357
Beaverton	125440	2,012
Calgarian	112205	2,272
Canadian	125427	2,214
City of Hamilton	153423	1,665
City of Kingston	152837	1,690
City of Montreal	153422	1,665
City of Toronto	152838	1,688
City of Windsor	154463	1,905
Edmonton	122856	1,983
Elgin	145518	1,906
Fairmount	68808	1,851
Fernie	154461	2,419
Grainmotor	154473	1,829
Hastings	145533	1,906
Huronic	107168	3,330
Kenora	124235	1,979
Kinmount	138187	1,711
Lethbridge	147702	2,407
Mapleheath	129767	1,692
Meaford	151043	1,824
Penetang	151046	1,824
Renvoyle	148133	3,571
Saskatoon	153436	2,412
Selkirk	152859	2,384
Simcoe	145511	1,783
Starmount	145609	1,859
Westmount	138232	7,392
Weyburn	153437	2,408
Winnipeg	152854	2,383

to transport goods by water between all ports or places in Canada on Lakes Ontario, Erie, Huron (including Georgian Bay), and Lake Superior, and their connecting waters, including the St. Lawrence River and its tributaries as far seaward as the west end of the Island of Orleans.

J. A. CROSS,
Chief Commissioner.

ORDER No. 65838

In the matter of the application of The Express Traffic Association of Canada, under Sections 322 and 360 of the Railway Act, for approval of proposed Supplement No. 13 to Express Classification for Canada No. 8, on file with the Board under file No. 4397.125:

MONDAY, the 19th day of March, A.D. 1945.

J. A. CROSS, K.C., *Chief Commissioner.*
 HUGH WARDROPE, *Assistant Chief Commissioner.*
 J. A. STONEMAN, *Commissioner.*
 G. A. STONE, *Commissioner.*
 F. M. MACPHERSON, *Commissioner.*

Notice having been given by The Express Traffic Association of Canada in *The Canada Gazette*, as required by Section 322 of the Railway Act, and copies of the said Supplement having been furnished to the parties named in General Orders of the Board Nos. 271, 348, 353, 469 and 471, and no objections having

been offered thereto; and upon the recommendation of the Assistant Director of Traffic of the Board—

It is ordered: That the said Supplement No. 13 to Express Classification for Canada No. 8, on file with the Board under file No. 4397.125, be, and it is hereby, approved.

J. A. CROSS,
Chief Commissioner.

ORDER No. 65832

In the matter of the application of the Canadian Pacific Railway Company, hereinafter called the "Applicant Company," for permission to amend its Tariff C.T.C. No. E.4380 on short notice:

File No. 27612.292

TUESDAY, the 20th day of March, A.D. 1945.

J. A. CROSS, K.C., *Chief Commissioner.*
HUGH WARDROPE, *Assistant Chief Commissioner.*
J. A. STONEMAN, *Commissioner.*

Whereas the Applicant Company advises that, through clerical error, Item 567 on 18th Revised Page 68, C.T.C. No. E.4380, effective April 10, 1945, provides for a rate of \$2.12 per ton of 2,000 pounds on clay from Ogdensburg, New York, to Kingston, Ontario, and enlarges the origin territory in connection with the rate on clay to Cornwall, Ontario;

And whereas the Applicant Company desires to reissue 18th Revised Page 68 and bring forward item 567 as now published on 17th Revised Page 68—

It is ordered: That the Applicant Company be, and it is hereby, permitted to amend its Tariff C.T.C. No. E.4380 as aforesaid, effective April 10, 1945.

J. A. CROSS,
Chief Commissioner.

ORDER No. 65844

In the matter of Agreed Charge between the Canadian National Railways, Canadian Pacific Railway Company, Northern Alberta Railways Company, and certain shippers covering transportation of lumber and forest products between stations in Western Canada specified therein, approved by Order No.59787, dated October 18, 1940:

File No. 40994.13

TUESDAY, the 20th day of March, A.D. 1945.

J. A. CROSS, K.C., *Chief Commissioner.*
HUGH WARDROPE, *Assistant Chief Commissioner.*
J. A. STONEMAN, *Commissioner.*
F. M. MACPHERSON, *Commissioner.*

Whereas D. A. Shaw, of Hines Creek, Alberta, has made application under subsection (6) of Section 35 of The Transport Act, 1938, and represented to the Board that his business will be unjustly discriminated against unless a similar charge be fixed for the transport of his lumber and forest products, and has

expressed his willingness to meet and comply with the provisions and conditions of the said Agreed Charge—

It is ordered: That the agreed charges approved by the said Order No. 59787, dated October 18, 1940, be, and they are hereby, fixed for the transport by the said railways of lumber and forest products as described in paragraph B of the said Agreed Charge, for D. A. Shaw, from Hines Creek, Alberta, to the stations referred to in paragraph C (2) of the said Agreed Charge, subject to and upon the terms and conditions contained in the said Agreed Charge; and the Board hereby appoints the date of this Order as the date on which the said charges fixed as aforesaid are to come into operation.

J. A. CROSS,
Chief Commissioner.

ORDER No. 65842

In the matter of the application of Sarnia Steamships, Limited, hereinafter called the "Applicant," for a licence under Section 10 of The Transport Act, 1938:

File No. 42076.14

WEDNESDAY, the 21st day of March, A.D. 1945.

J. A. CROSS, K.C., *Chief Commissioner.*
HUGH WARDROPE, *Assistant Chief Commissioner.*
G. A. STONE, *Commissioner.*
F. M. MACPHERSON, *Commissioner.*

Upon the report and recommendation of the Assistant Director, Traffic Department of the Board—

It is ordered: That Licence Number C.T.C. (W.T.) 125 be issued to the Applicant for the period of one year commencing on the 15th day of January, 1945, licensing the following ships, namely:—

Vessel Name	Official Registry No.	Gross Tonnage
<i>Chemong</i>	148073	1,902
<i>C. H. Houson</i>	149494	1,927
<i>E. P. Murphy</i>	149493	1,927
<i>Frank H. Brown</i>	148079	1,902
<i>Frank Wilkinson</i>	161524	1,940
<i>J. N. McWatters</i>	161519	1,928
<i>John A. France</i>	161518	1,938
<i>John O. McKellar</i>	149495	1,927
<i>Joseph P. Burke</i>	149499	1,926
<i>Lt. J. Misener</i>	161517	1,928
<i>Ralph Misener</i>	161520	1,940
<i>Scott Misener</i>	149475	1,939

to transport goods by water between all ports or places in Canada on Lakes Ontario, Erie, Huron (including Georgian Bay), and Superior, and their connecting waters, including the St. Lawrence River and its tributaries as far seaward as the west end of the Island of Orleans.

J. A. CROSS,
Chief Commissioner.

ORDER No. 65845

In the matter of the application of Colonial Steamships, Limited, hereinafter called the "Applicant," for licence under Section 10 of The Transport Act, 1938:

File No. 42076.16

WEDNESDAY, the 21st day of March, A.D. 1945.

J. A. CROSS, K.C., *Chief Commissioner.*

HUGH WARDROPE, *Assistant Chief Commissioner.*

G. A. STONE, *Commissioner.*

F. M. MacPHERSON, *Commissioner.*

Upon the report and recommendation of the Assistant Director, Traffic Department of the Board—

It is ordered: That Licence Number C.T.C. (W.T.) 126 be issued to the Applicant for the period of one year commencing on the 15th day of January, 1945, licensing the following ships, namely:—

Vessel Name	Official Registry No.	Gross Tonnage
<i>Bayton</i>	141675	4,176
<i>Easton</i>	132069	1,757
<i>Laketon</i>	137906	4,423
<i>Mathewston</i>	141679	7,403
<i>Royalton</i>	151108	7,164
<i>Yorkton</i>	132060	1,771

to transport goods by water between all ports or places in Canada on Lakes Ontario, Erie, Huron (including Georgian Bay), and Superior, and their connecting waters, including the St. Lawrence River and its tributaries as far seaward as the west end of the Island of Orleans.

J. A. CROSS,
Chief Commissioner.

ORDER No. 65861

In the matter of the application of The Tree Line Navigation Company, Limited, hereinafter called the "Applicant," for a licence under Section 10 of The Transport Act, 1938:

File No. 42076.9

SATURDAY, the 24th day of March, A.D. 1945.

J. A. CROSS, K.C., *Chief Commissioner.*

HUGH WARDROPE, *Assistant Chief Commissioner.*

J. A. STONEMAN, *Commissioner.*

G. A. STONE, *Commissioner.*

F. M. MacPHERSON, *Commissioner.*

Upon the report and recommendation of the Assistant Director, Traffic Department of the Board—

It is ordered: That Licence Number C.T.C. (W.T.) 127 be issued to the Applicant for the period of one year commencing on the 15th day of January, 1945, licensing the following ships, namely:—

Vessel Name	Official Registry No.	Gross Tonnage
<i>Elmbay</i>	150841	1,217
<i>Sprucebay</i>	150845	1,238
<i>Teakbay</i>	154462	1,895

to transport goods by water between all ports or places in Canada on Lakes Ontario, Erie, Huron (including Georgian Bay), and Superior, and their connecting waters, including the St. Lawrence River and its tributaries as far seaward as the west end of the Island of Orleans.

J. A. CROSS,
Chief Commissioner.

ORDER No. 65885

In the matter of the application of St. Lawrence Steamships Limited, hereinafter called the "Applicant", for a licence under Section 10 of The Transport Act, 1938:

File No. 42076.8

SATURDAY, the 31st day of March, A.D. 1945.

J. A. CROSS, K.C., *Chief Commissioner.*
HUGH WARDROPE, *Assistant Chief Commissioner.*
J. A. STONEMAN, *Commissioner.*
G. A. STONE, *Commissioner.*
F. M. MACPHERSON, *Commissioner.*

Upon the report and recommendation of the Assistant Director, Traffic Department of the Board—

It is ordered: That Licence Number C.T.C. (W.T.) 128 be issued to the Applicant for the period of one year commencing on the 15th day of January, 1945, licensing the following ships, namely:—

Vessel Name	Official Registry No.	Gross Tonnage
<i>Algonquins</i>	161515	2100
<i>Sioux</i>	161516	2100
<i>Cheyenne</i>	149498	1938

to transport goods by water between all ports or places in Canada on Lakes Ontario, Erie, Huron (including Georgian Bay), and Superior, and their connecting waters, including the St. Lawrence River and its tributaries as far seaward as the west end of the Island of Orleans.

J. A. CROSS,
Chief Commissioner.

ACCIDENTS REPORTED TO THE OPERATING DEPARTMENT BOARD OF TRANSPORT COMMISSIONERS FOR CANADA FEBRUARY, 1945

Railway Accidents173 with 30 killed and 161 injured
Level Crossing Accidents..... 19 with 4 killed and 37 injured

	Killed	Injured
Passengers	1	17
Employees	11	137
Others	22	44
Totals	34	198

DETAILS OF ACCIDENTS AT HIGHWAY CROSSINGS

Accidents	K.	I.	
NOVA SCOTIA			
1	1	13	Auto Bus drove onto crossing in front of approaching train and was struck. Licence N.S. C-1125.
NEW BRUNSWICK			
1	—	1	Automobile drove onto crossing in front of approaching train and was struck. Licence N.B. 33070.
QUEBEC			
1	—	1	Auto Truck drove onto crossing in front of approaching train and was struck. Licence Que. L-4720.
1	—	1	Horse-drawn vehicle drove onto crossing in front of approaching train and was struck.
1	—	1	Auto Taxi drove onto crossing in front of approaching train and was struck. Licence Ont. 2-L-127.
1	—	4	Automobile drove onto crossing in front of approaching train and was struck. Licence Ont. 401-M-6.
ONTARIO			
1	—	1	Pedestrian attempted to cross through train and fell while train on crossing.
1	—	1	Auto Truck drove onto crossing in front of approaching train and was struck. Licence Ont. 82637-C.
1	—	1	Automobile ran into side of train. Licence Ont. 401686.
1	—	1	Automobile drove onto crossing in front of approaching train and was struck. Licence Ont. 18-J-72.
1	1	1	Auto Truck ran into side of train. Licence Ont. 35941-C.
1	—	2	Automobile drove onto crossing in front of approaching train and was struck. Licence Ont. 1-S-122.
1	—	1	Automobile drove onto crossing in front of approaching train and was struck. Licence Ont. 14-R-48.
1	—	1	Automobile drove onto crossing in front of approaching train and was struck. Licence Ont. 995-V-4.
SASKATCHEWAN			
1	—	2	Automobile drove onto crossing in front of approaching train and was struck. Licence not given.
1	2	—	Auto Truck drove onto crossing in front of approaching train and was struck. Licence Sask. C-2033.
1	—	2	Auto Truck drove onto crossing in front of approaching train and was struck. Licence Sask. C-1339.
ALBERTA			
1	—	2	Track Motor Car slid against horse-drawn sleigh.
1	—	1	Auto Truck ran into side of train. Licence Alta. F-19397.

Of the 19 accidents at Highways Crossings, 14 occurred at Unprotected Crossings and 5 at Protected Crossings. Fifteen of the Accidents occurred after Sunrise and Four after Sunset.

April 4, 1945.

SUMMARY OF ORDERS ISSUED BY THE BOARD

- 65819 Mar. 12—Declaring C.P.R. crossing of Monclair Boulevard, Hull, Que., protected to the Board's satisfaction.
- 65820 Mar. 14—Declaring New York Central Railroad crossing of Tillson Ave., Tillsonburg, Ont., protected to the Board's satisfaction.
- 65821 Mar. 14—Authorizing Dept. of Public Works, Alberta, to construct public highway crossing of Northern Alberta Railways at Mile 294.9 Smoky Subdivision, Alberta.
- 65822 Mar. 15—Authorizing issuing of Licence No. C.T.C. (W.T.) 122 to the Abitibi Navigation Company, Limited.
- 65823 Mar. 16—Declaring C.P.R. crossing of highway at mileage 66.8 Nelson Subd., B.C., protected to Board's satisfaction.
- 65824 Mar. 16—Authorizing Great Northern Railway Co. to install protection at the crossing of Columbia Street, New Westminster, B.C.
- 65825 Mar. 16—Authorizing Quebec Central Railway Co. to use and operate Bridge No. 29.1 Newport Subd., P.Q.
- 65826 Mar. 16—Authorizing C.P.R. and C.N.R. to operate their trains through interlocking plant at crossing of their railways near St. Cloud, Ont.
- 65827 Mar. 17—Authorizing issuing of Licence No. C.T.C. (W.T.) 123 to Canada Steamship Lines Limited and The Northern Navigation Company Limited.
- 65828 Mar. 19—Authorizing issuing of Licence No. C.T.C. (W.T.) 124 to Canada Steamship Lines Limited and The Northern Navigation Company Limited.
- 65829 Mar. 17—Extending time within which the C.N.R. is to install protection at the crossing of the Jonquiere-Arvida Highway, Town of St. Dominique de Jonquiere, Que.
- 65830 Mar. 19—Authorizing C.P.R. to construct extension to branch line of railway to serve Imperial Oil Limited at Red Deer, Alta.
- 65831 Mar. 19—Extending time within which the C.P.R. was required to construct branch line of railway to serve F. C. Webb, Township of Etobicoke, County of York, Ont.
- 65832 Mar. 20—Authorizing C.P.R. to amend its Tariff C.T.C. No. E.4380 on short notice, to correct an error.
- 65833 Mar. 19—Authorizing C.P.R. to construct branch line of railway to serve the Union Oil Company of Canada, Limited, at Penticton, B.C.
- 65834 Mar. 19—Declaring C.N.R. crossing of highway first east of Craik Station, Sask., protected to Board's satisfaction.
- 65835 Mar. 19—Authorizing C.P.R. to remove the station agent at Pearce, Alta.
- 65836 Mar. 19—Declaring C.N.R. crossing of Jeanne d'Arc Street, Montreal, Que., protected to Board's satisfaction; present speed limitation of ten miles per hour to be maintained.
- 65837 Mar. 19—Declaring C.N.R. crossing of 15th Street, Prince Albert, Sask., protected to Board's satisfaction; present speed limitation of ten miles per hour to be maintained.
- 65838 Mar. 19—Approving Supplement No. 13 to Express Classification for Canada No. 8.
- 65839 Mar. 20—Approving under Maritime Freight Rates Act tolls published in tariffs filed by C.N.R. under Sec. 3.
- 65840 Mar. 20—Approving under Maritime Freight Rates Act tolls published in tariffs filed by the Dominion Atlantic Railway Co. under Sec. 9.
- 65841 Mar. 20—Approving under Maritime Freight Rates Act tolls published in tariffs filed by the Canadian Freight Association under Sections 3 and 9.
- 65842 Mar. 21—Authorizing issuing of Licence No. C.T.C. (W.T.) 125 to Sarnia Steamships, Limited.
- 65843 Mar. 20—Authorizing C.P.R. to construct branch line extension and realignment of trackage to serve The Consolidated Mining and Smelting Company of Canada Limited, at Warfield, B.C.
- 65844 Mar. 20—Approving Agreed Charge between the C.N.R., C.P.R., Northern Alberta Railways Co. for transportation of lumber and forest products for D. A. Shaw, Hines' Creek, Alta., between stations in Western Canada.
- 65845 Mar. 21—Authorizing issuing of Licence No. C.T.C. (W.T.) 126 to Colonial Steamships, Limited.

- 65846 Mar. 21—Authorizing Dept. of Public Works for B.C. to construct public highway crossing over C.N.R. at Evelyn, B.C.
- 65847 Mar. 21—Declaring C.P.R. crossing of highway just north of St. Jovite, Que., protected to Board's satisfaction.
- 65848 Mar. 21—Authorizing New York Central Railroad Co. to install flashing light signals and bells at crossing of Talbot St., Essex, Ont.
- 65849 Mar. 22—Authorizing Quebec Central Railway Co. to remove station agent at North Hatley, Que. (Caretaker to be appointed.)
- 65850 Mar. 22—Approving clearances of tipple located on C.P.R. branch lines serving Camrose Collieries Limited at Twomey, Alta.
- 65851 Mar. 22—Authorizing C.P.R. to make proposed changes to protection at its crossing with the C.N.Rys. near Komoka, Ont., mile 11·8 Windsor Subd.
- 65852 Mar. 23—Authorizing C.P.R. to construct branch line of railway to serve the Canadian Structural Steel Works Company, Ltd., in the Incorporated Village of Cote de la Visitation, City of Montreal, Que.
- 65853 Mar. 23—Approving location of pipe lines, etc., of Imperial Oil Ltd. near C.P.R. tracks at Stoughton, Sask.
- 65854 Mar. 23—Approving location of pipe lines, etc., of Imperial Oil Ltd., near C.P.R. tracks at Fairlight, Sask.
- 65855 Mar. 23—Declaring C.N.R. crossing of highway at mileage 35·20 Uxbridge Subd., Goodwood, Ont., protected to Board's satisfaction.
- 65856 Mar. 23—Approving under Maritime Freight Rates Act tolls published in tariffs filed by C.P.R. under Sec. 9.
- 65857 Mar. 23—Approving location of pipe lines, etc., of McColl-Frontenac Oil Co. Limited near C.N.R. tracks at New Glasgow, N.S.
- 65858 Mar. 22—Authorizing C.P.R. to make the alterations to interlocking plant at its crossing with the C.N.R. near Glencoe, Ont.
- 65859 Mar. 22—Authorizing C.P.R. to make the alterations to the interlocking plant at its crossing with the C.N.Rys. spur track to Dominion Sugar Company's plant near Chatham, Ont.
- 65860 Mar. 24—Approving agreement between The Bell Telephone Company of Canada and the Commissioners for the Telephone System of the Municipality of the Township of Moore.
- 65861 Mar. 24—Authorizing issuing of Licence No. C.T.C. (W.T.) 127 to Tree Line Navigation Company, Limited.
- 65862 Mar. 24—Declaring C.P.R. crossing of 8th Street East first east of station at Calgary, Alta., protected to Board's satisfaction; present speed limitation of ten miles per hour to be maintained.
- 65863 Mar. 26—Declaring C.P.R. crossing of highway at mileage 77·77 Taber Subd., Alta., protected to Board's satisfaction.
- 65864 Mar. 24—Authorizing C.P.R. to construct branch line of railway to serve the Manitoba Cartage & Warehousing Company, Limited, Winnipeg, Parish Lot 35, St. John, City of Winnipeg, Man.
- 65865 Mar. 27—Approving service station contract between The Bell Telephone Company of Canada and The Woodbridge and Vaughan Telephone Company Limited.
- 65866 Mar. 27—Extending time within which C.P.R. was required to install protection at crossing of Route No. 17, Parish of Ste. Madeleine de Rigaud, County of Vaudreuil, Que.
- 65867 Mar. 27—Extending time within which C.N.R. was required to install protection at crossing of Highway No. 11 at mileage 13·6 Huntsville Subd., Ont.
- 65868 Mar. 27—Declaring Algoma Central & Hudson Bay Railway crossing of Highway No. 17 just south of Odena, Ont., protected to Board's satisfaction.
- 65869 Mar. 27—Declaring C.N.R. crossing of highway third west of Villeneuve Station, Alta., protected to Board's satisfaction.
- 65870 Mar. 27—Dismissing application of Town of Fort Erie, Ont., for Order rescinding Order No. 65169, which directs that crossing of Gilmore Road by C.N.R. be protected by watchman for the full 24 hours daily.
- 65871 Mar. 27—Authorizing the McLeod River Hard Coal Co. (1941) Ltd., to construct mine entries under right of way of the C.N.Rys. at Mile 6·7 Mountain Park Subd., at Mercoal, Alta.
- 65872 Mar. 28—Declaring C.P.R. crossing of highway at mileage 89·57 Shogomoc Subd., N.B., protected to Board's satisfaction.

- 65873 Mar. 28—Approving under Maritime Freight Rates Act tolls published in tariffs filed by C.N.R. under Sec. 3.
- 65874 Mar. 28—Declaring C.N.R. crossing of Provincial Highway No. 5 at mileage 99·09 Sydney Subd., N.S., protected to Board's satisfaction.
- 65875 Mar. 28—Amending Order No. 65817, dated March 12th, 1945, to correct an error.
- 65876 Mar. 28—Declaring C.P.R. crossing of highway at mileage 96·45 Cranbrook Subd., B.C., protected to Board's satisfaction.
- 65877 Mar. 28—Declaring C.N.R. crossing of Colborne Street, London, Ont., protected to Board's satisfaction.
- 65878 Mar. 28—Declaring C.N.R. crossing of Caradoc Street, Strathroy, Ont., protected to Board's satisfaction; switching movements on sidings over said crossing to be flagged by a member of train crew.
- 65879 Mar. 28—Authorizing C.P.R. to make changes in interlocking plant at its crossing with C.N.Rys. at Actonvale, Que., mileage 41·95 Drummondville Subd.
- 65880 Mar. 29—Declaring C.N.R. crossing of Price Street second south of station at Vernon, B.C., protected to Board's satisfaction; present speed limitation of ten miles per hour to be maintained.
- 65881 Mar. 29—Authorizing C.P.R. to construct branch line of railway to serve Western Chemurgy Limited at Moose Jaw, extending in an easterly direction across portion of Block 45, Moose Jaw, Sask.
- 65882 Mar. 29—Approving The Bell Telephone Company of Canada's revised sheets of Tariffs C.T.C. Nos. 6652 and 6668.

NOTICES, ORDERS IN COUNCIL, ETC.

The following Order in Council is reproduced for the information of all concerned.

P.C. 1793

PRIVY COUNCIL

CANADA

AT THE GOVERNMENT HOUSE AT OTTAWA

FRIDAY, the 16th day of March, 1945.

PRESENT:

HIS EXCELLENCY

THE GOVERNOR GENERAL IN COUNCIL:

Whereas by Order in Council, P.C. 1866, of March 17, 1944, passed under the provisions of Subsection 2 of Section 12 of The Transport Act, 1938, the S.S. *Caribou* of the Dominion Transportation Company, Limited, and the S.S. *Manitoulin* of the Owen Sound Transportation Company, Limited, were exempted from the operation of Part II of the said Act, relative to Transport by Water, for the season of navigation of 1944, only;

And whereas the Minister of Transport reports that under date of February 26, 1945, the Board of Transport Commissioners for Canada advised that it is in receipt of a letter from the said Companies setting out that the same conditions will exist this year as are summarized in the said Order in Council, and, in such circumstances, the Board recommends that the exemption in respect of the said ships be continued for the season of navigation of 1945;

Therefore, His Excellency the Governor General in Council, on the recommendation of the Minister of Transport, is pleased to order that the S.S. *Caribou* of the Dominion Transport Company, Limited, and the S.S. *Manitoulin* of the Owen Sound Transportation Company, Limited, be and they are hereby exempted from the operation of Part II of The Transport Act, 1938, for the season of navigation of 1945, only.

A. D. P. HEENEY,

Clerk of the Privy Council.

55

The Board of Transport Commissioners for Canada

Judgments, Orders, Regulations and Rulings

Vol. XXXV

Ottawa, May 1, 1945

No. 3

This publication is issued fortnightly, on the 1st and 15th of each month. Annual subscription, \$3.00; single numbers, 20 cents; in quantities, 25 per cent discount. Remittances should be made to the King's Printer, Ottawa, by postal money order, express order or accepted cheque. The use of currency for this purpose is contrary to the advice of the postal authorities and entails a measure of risk. Postage stamps, foreign money or uncertified cheques will not be accepted. No extra charge is made for postage on documents forwarded to points in Canada and in the United States, but cost of postage is added to the selling price when documents are mailed to other countries. Early application should be made for copies in quantities. Subscriptions should be sent, in every case, to the King's Printer, Ottawa.

Consideration of the question of passenger train service on the line of the Canadian Pacific Railway Company between Maniwaki, in the Province of Quebec, and Ottawa, in the Province of Ontario, and particularly the passenger train service on such line for the Summer of 1945.

File No. 27257

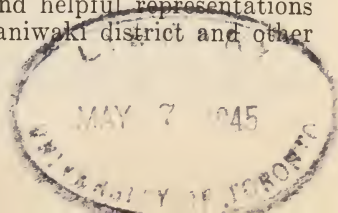
Mr. K. D. M. SPENCE appeared for Canadian Pacific Railway Company;
Mr. C. B. MacNAB for the Post Office Department;
Mr. J. W. SUTHERLAND,
Rev. Father THIBERT,
Mr. J. N. VAILLANCOURT,
Mr. PALMA JOANIS,
Mr. J. E. BOYLE, and others, appeared for Maniwaki and other Upper Gatineau Districts; and
Mr. W. P. J. O'MEARA, K.C.,
Brig.-Gen. D. M. ORMOND,
Mr. W. P. J. WAY,
Mr. D. G. McINTYRE,
Mr. B. J. FARRELL, and others, appeared for certain residents of the City of Ottawa, and for certain communities on the southern portion of the line of railway.

Heard at OTTAWA, March 20, 1945.

ORAL JUDGMENT

CROSS, *Chief Commissioner*:

We have decided to make a disposition of this matter now. We have heard to-day the representations of the railway with detailed statistics as to the passenger travel on the line, not only throughout the whole line, but the portion which might be called the northern portion as well as the portion which might be called the southern portion. We have had very complete and helpful representations presented to us from the people of Maniwaki, the Maniwaki district and other



communities in that part of the country. There have also been very complete representations of the situation in regard to the people who have been accustomed to residing part of the year at different points in what we might call the southern portion of the line and the balance of the year residing in Ottawa and Hull.

The situation is not an easy one to decide under present day conditions. The support to the line, not only during the summer months but the winter months as well, so far as passenger traffic goes, and that is what we are here concerned with to-day, comes from the Maniwaki or northern end of the line. The number of passengers boarding the trains at the northern end and going through to the southern end, or who board the train at the southern end and go through to the northern end, it is true, is much less than the number of passengers who live at the Ottawa end of the line and who travel only a short distance, returning again to Ottawa. Someone, I think, described that group of people as "commuters" who travel at very low rates indeed.

The people in the northern portion of the line deserve, I think, a lot of consideration—perhaps more consideration than we may be able to give them. They are there the year around. They are inconvenienced in a number of ways when the summer train schedule, such as last year, is in effect; one way is in regard to their postal arrangements and the delivery of their mail when it comes in so late in the evening. They are inconvenienced by the fact they are not able, on some occasions, to give attention to business which may require attention, as a result of the mail. They are inconvenienced, when the summer time table is in effect, by having to take the train at Maniwaki at the very early hour of five o'clock in the morning, except Sunday.

The situation, due to conditions arising mostly out of the war, prevailing in Ottawa to-day makes it, we think, necessary that there should be a summer service as there has been for a number of years, in order to meet that situation in respect of a lot of people at this end of the line. We have arrived at the decision and, I may say, with some reluctance, that the train service that was in effect during the summer months of 1944 should be put into effect again this year, for the same period and on the same schedule, subject to any modifications which may be necessary. I think we would like to say, further, that we only arrive at this conclusion at this time and for the present year because there does not seem to be any other practical solution of a somewhat difficult problem. We are now, of course, and have been on fast time. It may make some difference if we get back to standard time, particularly if Ottawa is on fast time.

We would suggest further:—we do not know whether anything could be done about it,—but we think that the railway company should make a very careful study before too long to see whether there is any other practical way of working out this problem. We hesitate a good deal in requiring the people on the northern portion of the line, Maniwaki and other places, to again put up with this substantial inconvenience for a period of five months during the year. From what one or two of those who spoke for them said, they probably would have been fairly well satisfied for the present with the compromise that the railway suggested, of limiting the summer schedule to three months. But under the conditions that prevail we do not think that would meet the situation. Unless something can be done for the people who have, during the last two or three years, been complaining from the Maniwaki and northern end of the district, it may be necessary to take some other action on another occasion.

The order will be that the passenger train service which was in effect during the summer months of 1944 will be put into effect during the summer months of 1945, for the same period and on the same schedule or practically the same schedule as was in effect in 1944.

OTTAWA, March 20, 1945.

Mr. Wardrope, Assistant Chief Commissioner, and Commissioners Stone-man, Stone and MacPherson concurred.

ORDER No. 65883

In the matter of the consideration of the question of passenger train service on the line of the Canadian Pacific Railway Company between Maniwaki, in the Province of Quebec, and Ottawa, in the Province of Ontario, and particularly the passenger train service on such line for the Summer of 1945.

File No. 27257

WEDNESDAY, the 28th day of March, A.D. 1945.

J. A. CROSS, K.C., *Chief Commissioner.*HUGH WARDROPE, *Asst. Chief Commissioner.*J. A. STONEMAN, *Commissioner.*G. A. STONE, *Commissioner.*F. M. MACPHERSON, *Commissioner.*

Upon hearing the matter at the sittings of the Board held at Ottawa on the 20th day of March, 1945, in the presence of Counsel for and representatives of the Canadian Pacific Railway Company, the Post Office Department, residents of Maniwaki and other upper Gatineau districts, and suburbanites, and what was alleged—

It is ordered: That the Canadian Pacific Railway Company put into effect during the summer months of 1945, for the same period and on the same schedule, or practically the same schedule, the passenger train service which was in effect during the summer months of 1944.

J. A. CROSS,
Chief Commissioner.

Consideration of the application of Canadian Pacific Railway Company, as lessee, exercising the franchises of the Ontario and Quebec Railway Company, under Sections 180 to 184, inclusive, and 312 of the Railway Act, for authority to construct, maintain and operate a branch line of railway in parts of Lots 576, 577, 578, 579 and 580, Cadastral Parish of St. Laurent, Town of Mount Royal, County of Jacques Cartier, Province of Quebec, at mileage 46.30 Adirondack Subdivision.

File No. 23202.3

Mr. K. D. M. SPENCE appeared for the Canadian Pacific Railway Company,
and

Mr. A. K. DYSART for Canadian National Railways.

JUDGMENT

CROSS, *Chief Commissioner:*

By application, dated November 10, 1944, Canadian Pacific Railway Company, as lessee, exercising the franchises of the Ontario and Quebec Railway Company, hereinafter called the Applicant Company, applied to the Board under Sections 180 to 184, inclusive, and 312 of the Railway Act, for authority to construct, maintain and operate a branch line of railway in part of Lots 576, 577, 578, 579 and 580, Cadastral Parish of St. Laurent, Town of Mount Royal, County of Jacques Cartier, Province of Quebec, at mileage 46.30 Adirondack Subdivision, all as shown in red on the plan and profile and described in the book of reference combined No. 890, dated Montreal, November 7, 1944, deposited in the Registry Office of the Registry Division of Montreal, on November 8, 1944, as No. 852, a copy of which plan is on file with the Board.

The Applicant Company also requests that, pursuant to the provisions of said Section 181 of the Railway Act, publication of notice of the application be dispensed with.

The length of said proposed branch line is approximately 6067 feet. The Applicant Company owns all of the land on which the proposed branch line is to be constructed, and also substantial blocks of land on either side of a substantial portion of the located line, as shown on said plan, which have been acquired for the purpose of providing industrial sites to be served by the proposed branch line.

By direction of the Board, a copy of the application was served on Canadian National Railways, hereinafter called the Railways. The Railways filed and delivered an answer opposing the application.

The industrial area (so called) with which we are here concerned is bounded on the north by the Cote de Liesse Road, on the east by Decarie Boulevard, and on the south and the west by the limits of the Town of Mount Royal. It is roughly three-quarters of a mile square and comprises part of said Lots 576, 577, 578, 579 and 580, and part of Lot 581. It contains approximately 460 acres. The area was until recently almost wholly, and still is largely cultivated farm lands owned by a number of individuals, excepting now, of course, the lands of the Applicant Company and land taken by the Railways for a spur line hereafter referred to.

The Parsley Siding and Jacques Cartier Subdivision of the Railways run in a northeasterly direction across the northwest corner of said Lots 576 and 577. It has been there since about the year 1895.

The proposed branch line of railway joins the Blue Bonnet spur at a point about one hundred feet south of the southeasterly boundary of said part of Lot 576; and the Blue Bonnet spur connects with the Adirondack Subdivision of the Applicant Company approximately 3000 feet south of the southeasterly boundary of said part of Lot 576.

The lands owned by the Applicant Company, above referred to, are situate within the industrial area, and are briefly described as follows:

(1) The southeasterly or rear 1000 feet in depth of part of said Lots 576, 577, 578, 579 and 580.

(2) The southeasterly or rear one-half of the remaining portion of said Lot 580, after deducting therefrom that part measuring 1000 feet in depth from the rear of said lot, which is included in (1) next above.

(3) A further portion of said Lot 580 consisting of a strip of land extending along the northeasterly boundary line of the lot, of a width of 100 feet therefrom, and extending right through to the front boundary of said Lot 580 where it meets Cote de Liesse Road.

(4) Certain parts of said Lot 576 comprising a strip of land 100 feet in width adjacent to the northeasterly boundary line of said Lot 576 and extending in length from a point to be measured 1000 feet from the rear or southeasterly boundary line of said lot in a northwesterly direction to meet the southeasterly limit of the right of way of the Jacques Cartier Union Railway (C.N.R.), and a strip of land 75 feet in width adjacent to the northeasterly boundary line of said Lot 576 and extending in length from the northwesterly limit of the right of way of the Jacques Cartier Union Railway (C.N.R.) to the front of said lot where it meets the public highway known as the Cote de Liesse Road.

One intention which the Applicant Company had in mind in purchasing the last two mentioned parcels of land was to provide private outlets to the Cote de Liesse Road.

The said lands of the Applicant Company were acquired by purchase from their respective owners for the purpose of providing industrial sites. Three options to purchase were, in the first instance, taken by the Applicant Company

from the several owners under date September 14, 1944, September 14, 1944, and September 15, 1944, respectively. These lands comprise an area of approximately 144 acres.

The Canada Dry Ginger Ale Limited had for some time occupied a building and premises at 5063 St. Urbain Street, in Montreal, owned by the Applicant Company. This building was destroyed by fire on May 31, 1944, and Canada Dry Ginger Ale Limited found it necessary to secure a new location and premises in which to carry on its business. A site for the purpose was secured on the northerly portion of Lot 581 at the junction of Cote de Liesse Road and Decarie Boulevard, on which site Canada Dry has since constructed a building and plant.

This new location was not served by rail. It was necessary to the business of Canada Dry that such service be secured by the construction of a spur or branch line of railway to its new location. During the Summer of 1944 certain negotiations took place between Canada Dry and the Applicant Company and Canada Dry and the Railways. An agreement was entered into between Canada Dry and the Railways whereby the Railways agreed to construct the necessary spur line to serve Canada Dry, the latter company agreeing to bear a portion of the cost.

Pursuant to the said agreement or arrangement, the Railways, under the authority of Order-in-Council P.C. 7875, of October 10, 1944, issued pursuant to the provisions of Section 21 of Chapter 172 of the Revised Statutes of Canada, 1927, constructed a spur line extending from a point on the Parsley Siding of the Jacques Cartier Subdivision, in the Town of Mount Royal, northeasterly across part of said Lots 576, 577, 578, 579, 580 and 581 to the said plant of Canada Dry Ginger Ale Limited then being constructed. The said spur line of the Railways is approximately 5260 feet in length, including 580 feet into the plant of Canada Dry Ginger Ale Limited. A substantial portion of the spur line runs parallel to Cote de Liesse Road at a distance of about 1290 feet.

Except as to the portion thereof on the site of the plant of Canada Dry Ginger Ale Limited, the land for the right of way of said spur line was taken by the Railways under the provisions of the Expropriation Act (R.S. Canada 1927, Chapter 64) as made applicable to that company by Canadian National Railways Act (R.S. Canada, 1927, Chapter 172) as amended by Chapter 10 of the Statutes of Canada, 1929. The Expropriation Plan in respect to such right of way is dated Montreal, September 27, 1944, and was registered in the Registry Office Division of Montreal on the 27th day of September, 1944, as No. 849 (Exhibit 6). The spur line crosses the two narrow strips of land of the Applicant Company in part of Lots 580 and 576 more particularly described in items numbered (3) and (4) above.

The Railway started work on the turn out for said spur line from their Parsley Siding, on October 6, 1944. Grading was started on October 11, 1944, completed on November 20, 1944, and the ballasting of the line was completed on November 30, 1944.

The Railways' decision to construct the said spur line to serve the plant of Canada Dry Ginger Ale Limited was influenced by the prospect of future industrial development in the area, which they contemplate will result from the construction of the line. And this because rail service is thereby made more readily accessible. It, perhaps, should be mentioned that the plant of Canada Dry Ginger Ale Limited is the only industry presently located in the said industrial area.

The Applicant Company contends that the Railways have no status to oppose the application; and that the construction of the said spur line is entirely unauthorized and illegal, for the following reasons:— That in the construction of the spur line to serve the plant of Canada Dry Ginger Ale Limited, the Rail-

ways, instead of applying to the Board, under the provisions of Sections 181, 182, 183 and 184 (the Branch Line Sections) of the Railway Act, for authority to construct such line, chose to rely for such authority on the provisions of their Special Act—the Canadian National Railways Act (R.S. Canada, 1927, Chapter 172), as amended by Chapter 10 of the Statutes of Canada, 1929; that the Railways have failed to sufficiently comply with the provisions of the Special Act before or since proceeding with the construction; and that the Railways have constructed their spur line across two strips of land of the Applicant Company without first obtaining the approval of the Board as required by Section 193 of the Railway Act.

The objections advanced by the Applicant Company were fully discussed, and argued by counsel for each of the parties. For the purposes of the present application I do not think it necessary to express any opinion upon the question whether the Railways, in the construction of their spur line, acted strictly within the statutory requirements. The Railways, in carrying out the works, purported to do so under the authority of their Special Act above referred to. No application was made to the Board under the Railway Act. I may say that it has not been the practice of the Railways to apply to the Board under the provisions of Sections 181, 182, 183 and 184 of the Railway Act for authority to construct a spur or branch line of railway. In any event, there is no application before the Board in regard to the existing spur of the Railways; the only application before us is for authority to construct the proposed branch line of the Applicant Company.

Apart entirely from the spur line constructed to serve the plant of Canada Dry Ginger Ale Limited, the Railways were already interested in the territory by reason of their Parsley Siding and Jacques Cartier Subdivision.

Under the facts and circumstances present here, and the long and well established practice of the Board in such matters, there can be no doubt that the Railways were properly entitled to appear and oppose the application.

The Railways oppose the application and raise the question of the Board's jurisdiction. It is clear from Sections 180, 181 and 182 of the Railway Act that the Board's powers thereunder to authorize construction of branch lines extend only to branch lines from the main line of the railway, or from a branch thereof. The Railways contend that the existing siding (the Blue Bonnet siding) is not a branch or part of the Applicant Company's railway, and that the Board has no power to authorize the proposed branch line.

If this contention of the Railways is correct, then the point is well taken, as the Board has held in a number of cases such as C.P.R. Co. vs. Saskatchewan Co-operative Livestock Producers, Limited, 53 C.R.C. 261, and Black Four Spur Track Co. Ltd. et al vs. Canadian National Railways, 55 C.R.C. 250, to which our attention was directed, that the Board has no power to authorize the construction of a branch line or spur from a branch or spur which is a private spur and not part of the applicant's railway.

It is necessary, therefore, to consider what title or right the Applicant Company has to or in respect of the existing Blue Bonnet siding and the lands upon which it is built.

A substantial portion of the said Blue Bonnet spur is situate on Lot 75, according to the plan and book of reference of the Parish of Montreal. Certificates of search issued by a Deputy Registrar, Registration Office of Montreal, and filed by the Railways, show the title to the said Lot 75 to be in the estate of Joseph Cattarinich, deceased, of which estate Blanche Emelda Vermette, his wife, is his residuary legatee and his executrix. The same certificates of search show the ownership of said Lot 75 to have been in The Montreal Jockey Club Limited from April 9, 1906, to November 17, 1908, and in The Montreal Jockey Club from the last mentioned date to January 16, 1931.

The said Blue Bonnet siding was built in the year 1906 by the Applicant Company at its own expense and has been used for serving The Montreal Jockey Club race track for three or four weeks in the year. The remainder of the time it has been used by the Applicant Company for the storage of its cars. In the case of private sidings the Applicant Company has a written siding agreement with the person served by the private siding, but in this case there is no such agreement. Mr. J. H. Forbes, Right of Way and Lease Agent, states that the siding was always considered to be the railway company's siding, and that it is not a private siding.

It is not shown what agreement or arrangement the Applicant Company had for the use of part of said Lot 75 at the time it constructed its Blue Bonnet siding in 1906. The ownership of the lot at the time was apparently in The Montreal Jockey Club Limited.

The Applicant Company obtained and holds an accepted option from the owner to purchase that portion of said Lot 75 on which the Blue Bonnet siding is constructed. The date of the option is not given but it was accepted on September 30, 1944. There has been some delay in securing a deed to the land as the grantor of the option died a couple of days before the Notary presented the deed for execution. Mr. Forbes states that, as soon as the will of the grantor is probated the purchase will be completed. The Applicant Company is, I think, in a position to have its title to the said portion of Lot 75 completed.

On the facts and circumstances present here I am inclined to the view that the Blue Bonnet siding is a part of the Applicant Company's railway, and not a private siding.

I think, however, that the Applicant company should file with the Board an authenticated copy of the deed of title which it receives pursuant to the said option, covering that portion of said Lot 75 on which its Blue Bonnet siding is constructed, and I would allow a reasonable time for this purpose.

The Railways also submit that the proposed branch line would result in an unwarranted duplication of railway facilities in the industrial area concerned, and is not "necessary in the public interest or for the purpose of giving increased facilities to business," within the meaning of Section 182 of the Railway Act; that their spur line which was recently constructed to serve the plant of Canada Dry Ginger Ale Limited is quite capable of furnishing all the railway facilities that will likely be required for some time to come; that if and when further spur lines are required to serve other parts of the area they are prepared to construct the same; and that such additional rail facilities can be more conveniently and economically furnished by the Railways by spurs connecting with their present spur line, than by means of the proposed spur line of the Applicant Company; and that it is not in the public interest that the Board should authorize a second branch line for the purpose of giving increased facilities to businesses which are only potential, and are not located in the area at the present time.

The Railways further submit that there can be no disadvantage to shippers located in the industrial area by reason of being served by their railway only, because of existing arrangements for interswitching of traffic between the Railways and the Applicant Company, at Jacques Cartier Junction, and the published tariffs of Interswitching Charges and provisions therein for the absorption of certain such charges by the carriers.

By Section 180 of the Railway Act, "The company may, for the purpose of its undertaking, construct, maintain and operate branch lines, not exceeding in any one case six miles in length, from the main line of the railway or, except as hereinafter provided, from any branch thereof."

Section 181 prescribes the necessary preliminary procedure as to making of plans, profiles and books of reference showing the location of the branch line, etc., and the giving of public notice of the applicant's intention to apply to the Board for authority to construct the branch line.

By Section 182, "The Board, if satisfied that the branch line is necessary in the public interest or for the purpose of giving increased facilities to business, and if satisfied with the location of such branch line, and the grades and curves as shown on such plan, profile and book of reference, may, in writing, authorize the construction of such branch line in accordance with such plan, profile and book of reference, or subject to such change in location, grades and curves as the Board may direct."

As will be seen from Section 182, the Board, before approving the application, must be satisfied "that the branch line is necessary in the public interest or for the purpose of giving increased facilities to business."

The Board has not attempted to prescribe any general rule, as to what evidence would be required to satisfy it that "the branch line is necessary in the public interest or for the purpose of giving increased facilities to business," within the meaning of Section 182. Each application has been dealt with on its own merits.

The matter was, however, discussed by the late, the Hon. Mr. Justice A. C. Killam, Chief Commissioner, in a judgment, dated April 10, 1907, *Re Application of Vancouver, Westminster and Yukon Railway Company to construct branch lines or spurs in Vancouver*. The case is unreported but is referred to in the Board's 4th Annual Report, page 222 (Board's File No. 3698, Case No. 432). It may not be inappropriate to state, in part, what Mr. Justice Killam said on that occasion, as follows:—

"It does not appear to me necessary, for such a purpose that there should be express evidence. I think that, in exercising the power given by section 223 (now Section 182), the Board can act upon its own knowledge of the locality, having in view the nature of the original railway and of the proposed branch. Where a company wishes to reach a factory or other place of business, the Board may consider, without further evidence, whether this is likely to be in the public interest or is likely to give increased facilities to business. Where the municipal authority of the city, town, or other municipality in which the branch is to be built expresses its assent, this may be sufficient ground for assuming that the line will be in the public interest or give increased facilities to business. Upon the facts that the V.W. & Y.R. Co. has at present no access to deep water, and that two of these proposed lines would give such access, the Board may base a similar assumption. In the exercise of this power, the Board is a public body, and it should be allowed to act upon its own view of interest without being tied down to strict evidence."

Most of the many applications made to the Board under Sections 180 to 184 inclusive of the Railway Act for authority to construct a branch line, have been for the purpose of serving some specific business or industry. In such cases the Board has, generally, considered such fact as sufficient evidence that the branch line was likely to be in the public interest or was likely to give increased facilities to business, and granted the application.

Here, there is no such specific business or industry involved. The application is not for the purpose of serving Canada Dry Ginger Ale Limited, although that was previously under consideration by the Applicant Company. The proposed branch line is intended to serve certain lands of the Applicant Company which it has acquired for the purpose of providing industrial sites.

Both the Railways and the Applicant Company have, for some time, looked upon this industrial area as a suitable place for future industrial development and the location of industries. Each had a railway in or adjacent to the territory; the Railways with their Jacques Cartier Subdivision and Parsley Siding, at the northerly end, and the Applicant Company with its Adirondack Subdivision and Blue Bonnet siding at the southerly end. This interest became more active, on the part of both companies, in 1944.

Witnesses for both the Applicant Company and Railways agree that the industrial area is one of the best localities on the Island of Montreal for a high class manufacturing development, and for industries and businesses engaged in the distribution of goods of various kinds to the City of Montreal and other places on the Island. Both of the railways have had a number of inquiries from business people who have expressed an interest in obtaining a location in the area. This interest has recently become more marked.

Mr. Frank W. Collins, a witness for the Applicant Company, states that his company had a limited number of inquiries in 1941 and 1942 from private industries who were looking at the area for development purposes; that, "in 1943 with the progress of the war, further interest became noted, but in 1944, last year, Sir, it became of great interest to firms in Montreal and elsewhere who were planning post war development. We have had many inquiries for locations in the vicinity and we have been asked the manner in which we might serve the property." Mr. Collins further says,—"We have several firms interested in locating in this vicinity. They are waiting to see what happens towards the development of the area." In connection with the inquiries to which Mr. Collins refers, the industrial area as a whole was considered. Some of those making inquiry expressed a desire to locate on properties which the Applicant Company purchased and owns, but they wished to know what provision could be made to give them rail trackage.

The area, including the lands acquired by the Applicant Company, located as it is close to the City of Montreal, offers I think substantial promise as a desirable and likely location for reasonably early industrial and business development and expansion.

One of the objectives of our railways has been to encourage the development of the business and industry of the country, and incidentally, of course, to thereby create traffic for the railways. This development has been, generally, regarded as in the public interest. It seems to me that this is largely what the Applicant Company was seeking to do when it acquired the lands for the purpose of providing industrial sites; which lands it now seeks to serve with railway and siding facilities by means of the proposed branch line.

Spur tracks or sidings with railway connections are essential to most manufacturing plants, industries and wholesale distributing businesses. Anyone, before purchasing a site for such a business, requires to know that rail facilities are conveniently available, or can and will be provided.

The proposed branch line of the Applicant Company, as shown in red on its said plan and profile filed with the application, extends in a northwesterly direction, in part of said Lot 580 for a distance of approximately 800 feet beyond that portion of the lands in said Lot 580 which the Applicant Company acquired for the purpose of providing industrial sites. From what is presently before us, I cannot see the necessity for the construction, at this time, of that portion of the proposed branch line.

Upon consideration of all that has been placed before us and under the circumstances present here, I am satisfied that the proposed branch line, except as to the said most northwesterly 800 feet thereof in part of said Lot 580, is necessary in the public interest or for the purpose of giving increased facilities to business.

The Applicant Company has also asked that publication of notice of the application be dispensed with. This the Board may do under Section 181, clause (b), of the Railway Act. To do so here would not, I think, prove prejudicial to anyone.

I would grant the application except as to the said most northwesterly 800 feet in length of the proposed branch line, as located on part of said Lot 580. Any necessary amendment to the plan should be made accordingly.

To do as I have proposed cannot, I think, result in any undue encroachment upon any rights which the Railways may have acquired in the industrial area by reason of the construction of their spur line to serve the plant of Canada Dry Ginger Ale Limited.

I would delay the issue of any order pending the filing by the Applicant Company with the Board of an authenticated copy of the deed of title which it is to receive pursuant to its option, covering that portion of said Lot 75 on which the Applicant Company's Blue Bonnet siding is constructed. This the Applicant Company should do, on or before June 30, 1945, unless the time for filing such authenticated copy is further extended upon application therefor to the Board.

March 31st, 1945.

J. A. CROSS

I concur

J. A. STONEMAN

G. A. STONE.

Consideration of the question of additional protection to be provided at the crossing of Sources Road, just west of Strathmore Station, in the Town of Pointe Claire, in the Province of Quebec, by the lines of the Canadian National Railways and Canadian Pacific Railway Company; and the allocation of the costs thereof.

File No. 25040

JUDGMENT

STONE, Commissioner:

Subsequent to the collision of an automobile with Canadian Pacific Railway train No. 7, at the highway-railway level crossing west of Strathmore station on May 8, 1938, when two persons were killed, presentations were made by, and on behalf of, the Citizens Association of the Town of Pointe Claire for installation of adequate protection to highway traffic against train movements.

On receipt of report on the accident submitted by the Board's investigating officer, and further study made of the situation by the Engineering Department of the Board, the question of protecting the crossings of the Canadian Pacific Railway, and the Canadian National Railways by automatic gates, the method of bonding this type of protection, and costs of installation and maintenance of same was a matter of correspondence and discussion with both Railways and the Municipality of the Town of Pointe Claire.

The Municipality stated that the highway was senior to both Railways, and that all costs involved for installation and maintenance of any protection necessary was an obligation of the Railways, and that no costs whatever should be assessed against the Municipality.

The Railways being at variance with the Municipality's contention, the matter was eventually heard by members of the Board at Montreal, P.Q., on April 11, 1939, when Counsel appeared for each of the Railways, and the Municipality of the Town of Pointe Claire. The evidence submitted at that hearing developed information that the Highway Department of the Province of Quebec had under consideration extensive plans for immediate construction of major highways on the Island of Montreal, and that the work undertaken on the new boulevard adjacent to Sources Road might eliminate the level crossings over both railways. By consent of Counsel it was decided to defer definite action on the question of expenditures for the proposed protection until a later date. No additional submissions were received from the Municipality or the Railways concerned and the matter was allowed to stand.

On October 11, 1943, another automobile was in collision with Canadian National train No. 5 at the highway-railway crossing on Sources Road, resulting in the death of one person and injuries to another. Following investigations made by the Board in connection with the accident, the question of installation of automatic protection was again developed. There did not appear to be any action taken or contemplated by the Highway Department of the Province of Quebec to eliminate the level crossings on Sources Road, or that the new highway would in future have the effect of eliminating them. This, combined with the contrary views of the parties concerned as to the distribution of the costs involved for automatic protection, resulted in the case being again heard by members of the Board at Montreal, P.Q., on February 6, 1945. Counsel representing the different parties were:—

A. K. DYSART for the Canadian National Railways.

K. D. M. SPENCE for the Canadian Pacific Railway.

ELPHEGE MARIER, K.C., for the Municipalities of Dorval and Pointe Claire.

One question that was raised was whether the Board has power to impose part of the cost of protection on the Town of Dorval, and it is convenient to deal with that question first.

The centre of Sources Road forms for some distance the dividing line between the Towns of Pointe Claire and Dorval, and at the points where the two railways cross this road, part of the road is within the limits of the Town of Dorval and part within the limits of the Town of Pointe Claire. In view of this fact, my opinion is that the Town of Dorval is "interested or affected" within the meaning of s. 39 of the Railway Act, and that therefore the Board has power to impose part of the cost of protection on the Town of Dorval.

In this connection, the Board's attention was drawn to the agreement between the two Towns, dated June 30, 1923 (Exhibit No. 1). By the agreement the Town of Pointe Claire undertook the construction and maintenance of the south half of the Sources Road, and the Town of Dorval, on the other hand, undertook the construction and maintenance of the north half of the road. The Town of Pointe Claire is, therefore, under the terms of the agreement responsible for the maintenance of Sources Road at the points where it is crossed by both railways. But this agreement does not purport to change the location of the boundary line between the municipalities, and in my view it is merely a working arrangement for the construction and maintenance of the highway, and does not affect either the rights of third parties or the powers of the Board under s. 39.

The evidence submitted shows that in addition to those engaged in the farming industry residing north of the railway who pass over the level crossing to reach the main highway and business centres, there are some 30 or 35 houses in Strathmore located just north of the Canadian Pacific lines, residents from summer cottages on the back river road, and traffic from St. Laurent and Cartierville who use Sources Road, it being a through highway between the north and south of Montreal Island.

The traffic counts filed by Counsel for Canadian Pacific Railway Company as Exhibit No. 2, taken from 6 a.m. January 31, to 6 a.m. February 1, 1945, show a total of 549 movements over C.P.R. tracks, consisting of 65 trains, 34 horse drawn vehicles, 95 private automobiles, 82 trucks and 273 pedestrians and bicycles. A similar statement filed by Counsel for the Canadian National Railways taken from 12 midnight March 23, 1944, until the following midnight, a period of 24 hours, filed as Exhibit No. 4, shows 61 train movements over C.P.R. tracks, 60 train movements over C.N.R. tracks (a total of 121 trains), 492 pedestrians, 2 auto buses, 10 bicycles, 4 horse drawn vehicles, 39 motor trucks and 89 autos.

The use of the crossing at the time of the year when these traffic counts were taken was at a season when the highway traffic would not be as heavy as during

the summer months, and when gasoline restriction for private automobile use is probably felt more by the individual operator than the few months following April 1.

On the north approach to the C.P.R. tracks the view lines on the highway are restricted on account of the steep approach until a point is reached 100 feet from the crossing, when trains can then be seen for a distance of 1,200 feet east, and 1,400 feet west, when 60 feet from the tracks trains can be seen for approximately two miles.

Approaching the tracks of the C.N.R. from the south the view lines are short in the easterly direction on account of the present location of the Canadian National Railways' station; there is also a rise on the highway approach towards the C.N.R. tracks from the new boulevard. In a westerly direction at 100 feet from the tracks trains can be seen for a considerable distance.

Between the tracks of the two railways there is a distance of approximately 65 feet where the highway is lower than the railways.

Mr. Oscar Beaudoin, Civil Engineer for the Town of Pointe Claire, who is thoroughly familiar with the territory, stated that Sources Road is the connecting road between the two sides of the Island, and the only link between the Town of Pointe Claire and the Town of Dorval, that there is quite a bit of traffic on Sources Road, particularly in summer. The road is three miles long and is the main road to the Laurentians or any district north. At page 439, Vol. 716, Mr. Beaudoin, cross-examined by Counsel for the Canadian National Railways, stated:—

“Q. Now, you suggested to the Board, in your opinion, this was a dangerous crossing?

A. Undoubtedly.”

Counsel for the C.P.R. submitted that the crossing over their railway is not a dangerous one, it is a particularly clear and open one. He admitted: “There is a considerable amount of traffic, both rail and highway, that is admitted....” He suggested that an improvement in the grades on the approaches would aid materially in making this crossing even safer than it is at present, and also that if protection were ordered, the protection placed at the crossings over the respective railways should be installed for independent operation as this method would prevent confusion in maintenance between the two railways. He also stated that the Municipalities should be prepared to contribute at least to a proportion of construction and maintenance costs.

Counsel for the C.N.R. contended that if users of Sources Road were normally prudent and heeded the warning signs, accidents would not occur, that only two accidents had happened on the crossing over the C.N.R. tracks in twenty-two years, and if it should be that protection is ordered, such as flashing lights and bell, the operation should be independent for each railway; that, irrespective of whether the railways are junior at the crossing, they should not be called upon to bear the whole brunt of the burden, and if a contribution were made from the Grade Crossing Fund towards installation of protection, the balance of the costs should be apportioned between the Highway authorities and the Railways.

Apparently protection of some form is warranted, also the raising of the highway on both approaches and between both railways, which, if done, it is alleged, will considerably improve the view of the tracks on both railways. It appears to me that when the railways were built over this old established highway the hazards to highway traffic developed, and the approaches as then constructed were the obligation of the railways. I see no reason why any costs for reconstruction of the approaches should now be placed on the Municipalities concerned to bring these approaches up to the standard requirements of the Board.

In deciding on the distribution of the cost of protection at crossings, the Board has repeatedly refused to consider itself bound by the junior and senior rule. And in the present case I think that the Municipalities may properly be required to bear part of the costs of the protection considered necessary at the crossing.

The type of protection considered efficient was suggested by the railways to be flashing lights with one bell. This opinion concurs with the reports of our Signal Engineer, provided the approaches are brought up to standard and the protection is operated by each railway independently of each Company's tracks.

I would order automatic protection by flashing lights and one bell to be installed at each crossing, independently operated by each railway separate from the other; forty per cent of the cost for each installation to be paid from the Grade Crossing Fund; and that the remainder of the costs be divided as follows:—

1. That the balance of the costs for installation and maintenance of the automatic flashing lights and bell erected at the Canadian National Railways' double track crossing on Sources Road be apportioned 70 per cent against the Canadian National Railways, 15 per cent against the Municipality of the Town of Pointe Claire and 15 per cent against the Town of Dorval.

2. That the balance of the costs for installation and maintenance of the automatic flashing lights and bell erected at the Canadian Pacific Railway's double track crossing on Sources Road be apportioned 70 per cent against the Canadian Pacific Railway Company, 15 per cent against the Municipality of the Town of Pointe Claire, and 15 per cent against the Town of Dorval.

I would also order the Canadian National Railways to raise the highway on the south approach to their tracks to conform with the standard requirements of the Board, also level up that portion of the highway on their right-of-way between their tracks and those of the Canadian Pacific Railway, all costs for this part of the work to be borne by the Canadian National Railways, and further,

That the Canadian Pacific Railway Company be directed to bring the highway approach north of their tracks up to the standard requirements of the Board, and raise that part of the highway on their right-of-way between the Canadian National Railways' tracks and their own, all costs for this part of the work to be borne by the Canadian Pacific Railway Company.

That plans of the protection and improvements as directed be submitted to the Engineering Department of the Board for approval, and the works as directed to be completed ninety days after issuance of the Board's Order.

Order to go accordingly.

March 27, 1945.

G. A. STONE,
Commissioner.

I concur,

J. A. CROSS.

J. A. STONEMAN.

Considération de la question de protection additionnelle à l'intersection de la Montée des Sources, située juste à l'ouest de la gare de Strathmore, en la ville de Pointe-Claire, et des voies du Canadien-National et du Pacifique-Canadien; et considération de la question de la répartition des frais à ce sujet.

Dossier N° 25040

JUGEMENT

STONE, Commissaire:

Subséquemment à la collision d'une automobile et du train n° 7 du Pacifique-Canadien survenu au passage à niveau à l'ouest de la gare de Strathmore, P.Q., le 8 mai 1938, alors que deux personnes furent tuées, des représentations furent soumises au nom de l'Association des citoyens de la ville de Pointe-Claire à l'effet qu'il soit installé un mode de protection convenable pour la circulation routière à l'égard du trafic ferroviaire.

A la suite de la réception du rapport d'un inspecteur de la Commission concernant ledit accident et d'une étude de la situation faite par le service du génie de la Commission, la question de la protection des passages du Pacifique-Canadien et du Canadien-National au moyen de barrières automatiques et de la façon de relier ces dernières aux rails, ainsi que la question du coût d'installation et d'entretien desdites barrières furent le sujet de correspondance et de discussions avec les deux chemins de fer et avec la ville de Pointe-Claire.

Les autorités municipales ont déclaré que la route était plus ancienne qu'aucun des deux chemins de fer et qu'en conséquence tous les frais d'installation et d'entretien de tout mode de protection jugé nécessaire devaient être à la charge du chemin de fer, et que la municipalité ne devrait pas être appelée à contribuer d'aucune façon auxdits frais de protection.

Vu que les chemins de fer n'étaient pas d'accord avec la prétention de la municipalité, l'affaire fut éventuellement entendue par la Commission, à Montréal le 11 avril 1939. La preuve soumise à cette instruction révéla que le ministère de la Voirie de la province de Québec avait étudié de vastes projets relativement à la construction immédiate de grandes artères sur l'île de Montréal, et que l'on avait cru que les travaux entrepris sur le nouveau boulevard, près de la Montée des Sources, élimineraient peut-être les passages à niveau des deux chemins de fer. Avec l'assentiment des avocats, il fut décidé de renvoyer à plus tard la décision définitive sur la question des frais en rapport avec le dispositif de protection projeté. Rien de plus ne fut soumis de la part de la municipalité et des chemins de fer concernés, et l'on consentit à laisser l'affaire en suspens.

Une autre collision survint, le 11 octobre 1943, entre une automobile et le train n° 5 du Canadien-National à l'intersection de la Montée des Sources. A cette occasion, une personne fut tuée et une autre blessée. A la suite de l'enquête faite par la Commission en rapport avec ce dernier accident, la question de l'installation d'un dispositif de protection automatique fut de nouveau soulevée. Rien n'indiquait que le ministère de la Voirie songeait à prendre une action quelconque relativement à l'élimination des passages à niveau de la Montée des Sources, ou que la nouvelle route aurait pour effet de les faire disparaître. En conséquence, et vu la divergence d'opinions des parties intéressées à la question de répartition des frais d'installation d'un dispositif de protection

automatique, l'affaire fut de nouveau inscrite pour être entendue à Montréal le 16 février 1945. A cette audience, les avocats des différentes parties étaient les suivants:

A. K. DYSART, pour le Canadien-National,

K. D. M. SPENCE, pour le Pacifique-Canadien, et

ELPHÈGE MARIER, pour les municipalités de Dorval et de Pointe-Claire.

Une des questions soulevées concerne la compétence de la Commission d'imposer une partie des frais à la ville de Dorval, et il est à propos de disposer de cette question en premier lieu.

Le centre de la Montée des Sources, sur une certaine distance, forme la ligne de division entre les villes de Pointe-Claire et de Dorval, et aux endroits où les deux chemins de fer croisent la route, une partie de cette dernière est en dedans des limites de la ville de Dorval, et l'autre en dedans des limites de la ville de Pointe-Claire. Vu ce fait, je suis d'opinion que la ville de Dorval est "intéressée ou affectée" en vertu de l'article 39 de la Loi des chemins de fer et qu'en conséquence, il est du ressort de la Commission d'imposer une partie des frais de protection à la ville de Dorval.

A ce sujet, on attira l'attention de la Commission sur l'entente qui existait entre les deux villes, et qui était datée du 30 juin 1923 (pièce n° 1). En vertu de cette entente, la ville de Pointe-Claire avait entrepris la construction et assumé l'entretien de la moitié, du côté sud, de la Montée des Sources, et la ville de Dorval, de l'autre moitié. En vertu des termes de ladite entente, la ville de Pointe-Claire est, en conséquence, tenue d'entretenir la Montée des Sources à l'endroit où elle est croisée par les deux chemins-de fer. Cette entente, toutefois, n'est pas censée changer la ligne de division entre les municipalités et, à mon point de vue, ceci n'est qu'un arrangement pour fins de construction et d'entretien du chemin et ne porte aucune atteinte aux droits des tierces parties ni aux pouvoirs de la Commission en vertu de l'article 39 de la Loi des chemins de fer.

La preuve indique qu'en plus des personnes qui s'occupent d'agriculture et qui résident du côté nord de la voie et qui utilisent le passage à niveau pour se rendre à la route principale et aux centres d'affaires, la Montée des Sources est utilisée par les résidents d'environ 30 ou 35 maisons de Strathmore, situées juste au nord des voies du Pacifique-Canadien, par des résidents de maisons d'été situées sur la route de la rivière des Prairies, ainsi que par des véhicules venant de St-Laurent et de Cartierville, la Montée des Sources étant une route directe entre le nord et le sud de l'île de Montréal.

Le relevé de la circulation de 6 hrs a.m., le 31 janvier, à 6 hrs a.m., le 1er février 1945, produit par l'avocat du Pacifique-Canadien comme pièce n° 2 indique un total de 549 mouvements sur et à travers les voies du Pacifique-Canadien, savoir 65 trains, 34 véhicules à traction animale, 95 automobiles privées, 82 camions et 273 piétons et cyclistes. Un relevé semblable, produit par l'avocat du Canadien-National comme pièce n° 4, pour une période de 24 heures à compter de minuit le 23 mars 1944, indique qu'il y a eu 61 mouvements de trains sur les voies du Pacifique-Canadien et 60 sur les voies du Canadien-National, soit un total de 121 trains, et qu'il y est passé 492 piétons, 10 cyclistes, 2 autobus, 4 véhicules à traction animale, 39 camions et 89 automobiles.

La circulation à ce passage au temps de l'année où ces relevés ont été pris n'est pas aussi considérable que durant les mois d'été, alors que les propriétaires d'automobiles privées se ressentent davantage de la restriction de l'essence que durant les quelques mois qui suivent le 1er avril.

Du côté nord des voies du Pacifique-Canadien, la visibilité sur la route est restreinte à cause de la forte pente de l'approche jusqu'à cent pieds du passage où un train peut être vu sur une distance de 1,200 pieds vers l'est et de 1,400 pieds vers l'ouest. A 60 pieds de la voie, un train peut être vu à une distance d'environ deux milles.

Du côté sud de la voie du Canadien-National, regardant vers l'est, la visibilité est restreinte par la présence de la gare dudit chemin de fer; de même, à partir du nouveau boulevard jusqu'à la voie du Canadien-National, la route va s'élevant. A cent pieds de la voie, regardant vers l'ouest, les trains peuvent être vus à une distance considérable.

Entre les voies des deux chemins de fer, sur une distance d'environ 65 pieds, la route est moins élevée que lesdites voies.

Monsieur Oscar Beaudoin, ingénieur de la ville de Pointe-Claire, qui connaît très bien le territoire, déclara que la Montée des Sources est le chemin de raccordement entre les deux côtés de l'île et le seul lien entre les villes de Pointe-Claire et de Dorval; aussi, que la circulation sur la route est assez considérable, particulièrement pendant la saison d'été. La route est d'une longueur de trois milles et elle est l'artère principale qui conduit aux Laurentides ou vers toutes les régions du nord. Lors de son interrogatoire par l'avocat du Canadien-National, M. Beaudoin déclara ce qui suit: (*voir* page 439, Vol. 716 de la preuve).

"Q. Vous avez suggéré à la Commission que vous êtes d'opinion que c'est un passage dangereux ?

R. Indubitablement."

L'avocat du Pacifique-Canadien soumit que le passage, à l'endroit où il croise les voies du Pacifique-Canadien, n'est pas dangereux; qu'il est particulièrement dégagé. Il admit: "Il y a une circulation considérable sur le chemin de fer et sur la route, ceci est admis....." Il suggéra que l'adoucissement de la pente des approches du passage aiderait naturellement à rendre ledit passage encore plus sûr qu'il ne l'est présentement, et aussi que si un mode de protection était décrété, les dispositifs installés sur les deux chemins de fer devraient être installés séparément car cette méthode obvierait à toute confusion entre les deux chemins de fer en ce qui concerne l'opération et l'entretien. Il déclara aussi que les municipalités devraient être disposées à payer au moins une partie du coût de construction et d'entretien.

L'avocat du Canadien-National soutint que si les usagers de la Montée des Sources étaient raisonnablement prudents et attentifs aux signaux avertisseurs, il ne se produirait pas d'accidents; il déclara que deux accidents seulement se sont produits au passage des voies du Canadien-National durant vingt-deux ans, et que si un mode de protection était décrété, tel qu'au moyen de signaux à feux-éclairs et de cloches, la mise en opération desdits signaux devrait être indépendante pour chaque chemin de fer; que nonobstant le droit d'ancienneté au passage, les chemins de fer ne devraient pas être tenus d'assumer tous les frais de protection, et que si une contribution était accordée à même la Caisse des passages à niveau, le reliquat des frais devrait être réparti entre les autorités qui ont juridiction sur la route et les chemins de fer.

Apparemment un mode de protection quelconque s'impose, ainsi que le rehaussement de la route des deux côtés du passage et entre les voies des deux chemins de fer, et l'on prétend que si ces travaux sont effectués, la vue des voies des deux chemins de fer sera considérablement améliorée. Il me semble que la construction des chemins de fer à travers cette ancienne route a augmenté les risques d'accidents pour la circulation routière, et que la responsabilité quant aux approches de la voie telles que construites appartenait aux chemins de fer. Je ne vois pas de raison pourquoi aucune partie du coût de reconstruction des approches, afin de les rendre conformes aux exigences de la Commission, ne devrait être mise à la charge des municipalités.

A maintes reprises, lorsque la Commission a été appelée à rendre une décision relativement à une question de répartition des frais de protection à un passage, elle a refusé de se considérer liée à la règle du droit d'ancienneté. Je crois que dans le cas présent, les municipalités peuvent être proprement requises d'assumer une partie des frais de la protection considérée nécessaire à ce passage.

Les chemins de fer ont suggéré, comme mode de protection efficace, le signal à feux-éclairs et la cloche. Ceci est d'accord avec la recommandation faite dans le rapport de notre ingénieur des signaux, pourvu que les approches soient améliorées de façon à les rendre conformes aux exigences de la Commission et que les dispositifs de protection soient mis en opération séparément par chaque chemin de fer.

J'ordonnerais l'installation d'un signal à feux-éclairs et d'une cloche au passage de chaque chemin de fer, lesquels devront être mis en opération séparément par chaque chemin de fer; que quarante pour cent du coût d'installation soit payé à même la Caisse des passages à niveau et le reliquat réparti comme suit:

1. Que le reliquat du coût d'installation et les frais d'entretien des signaux à feux-éclairs et de la cloche érigés à l'intersection de la voie double du Canadien-National et de la Montée des Sources soient payés dans la proportion de 70 pour cent par le Canadien-National, 15 pour cent par la ville de Pointe-Claire et 15 pour cent par la ville de Dorval.

2. Que le reliquat du coût d'installation et les frais d'entretien des signaux à feux-éclairs et de la cloche érigés à l'intersection de la voie double du Pacifique-Canadien et de la Montée des Sources soient payés dans la proportion de 70 pour cent par le Pacifique-Canadien, 15 pour cent par la ville de Pointe-Claire et 15 pour cent par la ville de Dorval.

J'ordonnerais aussi au Canadien-National de rehausser la route à l'approche sud de ses voies afin de rendre ladite route conforme aux exigences de la Commission, et aussi de rehausser la partie de la route sur son emprise, entre ses voies et celles du Pacifique-Canadien, et que tous les frais de ces travaux soient payés par le Canadien-National, et de plus,

Que le Pacifique-Canadien soit requis de rendre conforme aux exigences de la Commission l'approche nord de ses voies et de rehausser la partie de la route sur son emprise entre ses voies et celles du Canadien-National, et que tous les frais de ces travaux soient payés par le Pacifique-Canadien.

Que des plans montrant l'installation des dispositifs de protection et les améliorations telles que décrétées soient soumis à l'approbation d'un ingénieur de la Commission, et que les travaux ordonnés soient parachevés dans les quatre-vingt-dix jours de la date de l'émission de l'ordonnance de la Commission en cette affaire.

Une ordonnance sera rendue en conséquence.

Le 27 mars 1945.

G. A. STONE.

J'agréé,

J. A. CROSS

J. A. STONEMAN

ORDER No. 65887

In the matter of the consideration of the question of the additional protection to be provided at the crossing of the highway by the Canadian Pacific Railway just west of Strathmore Station, in the Town of Pointe Claire, in the Province of Quebec, at mileage 6·74 Winchester Subdivision.

File No. 25040

TUESDAY, the 3rd day of April, A.D. 1945.

J. A. CROSS, *K.C., Chief Commissioner.*

J. A. STONEMAN, *Commissioner.*

G. A. STONE, *Commissioner.*

Upon hearing the matter at the sittings of the Board held at Montreal on the 6th day of February, 1945, in the presence of Counsel for the Towns of Pointe Claire and Dorval and the Railway Company, and what was alleged—

It is ordered:

1. That, within ninety days from the date of this Order, the Canadian Pacific Railway Company install and maintain two flashing light signals and one bell at the crossing of the highway just west of Strathmore Station, in the Town of Pointe Claire, in the Province of Quebec, mileage 6·74 Winchester Subdivision, in accordance with the Specifications approved by General Order No. 607, dated September 29, 1941: a detail plan showing the layout thereof to be submitted for the approval of an Engineer of the Board.

2. That forty per cent of the cost of installing the said flashing light signals and bell, not exceeding, however, the sum of \$2,000, be paid out of the Railway Grade Crossing Fund; and that the remainder of such cost be borne and paid seventy per cent by the Canadian Pacific Railway Company, fifteen per cent by the Town of Pointe Claire, and fifteen per cent by the Town of Dorval.

3. That the cost of maintaining the said flashing light signals and bell be borne and paid seventy per cent by the Canadian Pacific Railway Company, fifteen per cent by the Town of Pointe Claire, and fifteen per cent by the Town of Dorval.

4. That the Canadian Pacific Railway Company bring the highway approach north of its tracks up to the Standard Regulations of the Board Affecting Highway Crossings, and raise that part of the highway on its right of way between its tracks and the tracks of the Canadian National Railways to a mean level between the two railways; all costs of the work ordered by this paragraph to be paid by the Canadian Pacific Railway Company.

J. A. CROSS,

Chief Commissioner.

ORDER No. 65888

In the matter of the consideration of the question of the additional protection to be provided at the crossing of the highway by the Canadian National Railways just west of Strathmore Station, in the Town of Pointe Claire, in the Province of Quebec, at mileage 12·18 Cornwall Subdivision; and the allocation of the costs thereof.

File No. 25040

TUESDAY, the 3rd day of April, A.D. 1945.

J. A. CROSS, K.C., *Chief Commissioner.*

J. A. STONEMAN, *Commissioner.*

G. A. STONE, *Commissioner.*

Upon hearing the matter at the sittings of the Board held at Montreal on the 6th day of February, 1945, in the presence of Counsel for the Towns of Pointe Claire and Dorval and the Railway Company, and what was alleged—

It is ordered:

1. That, within ninety days from the date of this Order, the Canadian National Railways install and maintain two flashing light signals and one bell at the crossing of the highway just west of Strathmore Station, in the Town of Pointe Claire, in the Province of Quebec, mileage 12·18 Cornwall Subdivision; in accordance with the Specifications approved by General Order No. 607, dated September 29, 1941: a detail plan showing the layout thereof to be submitted for the approval of an Engineer of the Board.

2. That forty per cent of the cost of installing the said flashing light signals and bell, not exceeding, however, the sum of \$1,640, be paid out of the Railway Grade Crossing Fund; and that the remainder of such cost be borne and paid seventy per cent by the Canadian National Railways, fifteen per cent by the Town of Pointe Claire, and fifteen per cent by the Town of Dorval.

3. That the cost of maintaining the said flashing light signals and bell be borne and paid seventy per cent by the Canadian National Railways, fifteen per cent by the Town of Pointe Claire, and fifteen per cent by the Town of Dorval.

4. That the Canadian National Railways raise the highway on the south approach to their tracks to conform to the Standard Regulations of the Board Affecting Highway Crossings, and raise that portion of the highway on their right of way between their tracks and the tracks of the Canadian Pacific Railway Company to a mean level between the two railways; all costs of the work ordered by this paragraph to be paid by the Canadian National Railways.

J. A. CROSS,

Chief Commissioner.

ORDER No. 65894

In the matter of Agreed Charge between the Canadian National Railways, Canadian Pacific Railway Company, Northern Alberta Railways Company and certain shippers covering transportation of lumber and forest products between stations in Western Canada specified therein, approved by Order No. 59787, dated October 18, 1940:

File No. 40994.13

FRIDAY, the 6th day of April, A.D. 1945

J. A. CROSS, *K.C., Chief Commissioner.*J. A. STONEMAN, *Commissioner.*G. A. STONE, *Commissioner.*F. M. MACPHERSON, *Commissioner.*

Whereas the Crooked Creek Lumber Co., of Grande Prairie, Alberta, has made application under subsection (6) of Section 35 of The Transport Act, 1938, and represented to the Board that its business will be unjustly discriminated against unless a similar charge be fixed for the transport of its lumber and forest products, and has expressed its willingness to meet and comply with the provisions and conditions of the said Agreed Charge—

It is ordered: That the said agreed charges approved by the said Order No. 59787, dated October 18, 1940, be, and they are hereby, fixed for the transport by the said railways of lumber and forest products as described in paragraph B of the said Agreed Charge, for the Crooked Creek Lumber Co. from Grande Prairie, Alberta, to the stations referred to in paragraph C(2) of the said Agreed Charge, subject to and upon the terms and conditions contained in the said Agreed Charge; and the Board hereby appoints the date of this Order as the date on which the said charges fixed as aforesaid are to come into operation.

J. A. CROSS,
Chief Commissioner

SUMMARY OF ORDERS ISSUED BY THE BOARD

65883. Mar. 28—Authorizing C.P.R. to put into effect during summer months of 1945 passenger train service between Maniwaki, Que., and Ottawa, Ont. which was in effect during summer months of 1944.
65884. Mar. 31—Approving laying of pipe lines by United Gas & Fuel Co. of Hamilton, Limited, under tracks of Toronto, Hamilton & Buffalo Railway Co. and the C.N.Rys., Hamilton, Ont.
65885. Mar. 31—Authorizing issuing of Licence No. C.T.C. (W.T.) 123 to St. Lawrence Steamships Limited.
65886. Apr. 4—Declaring C.P.R. crossing of Bridge Street, Almonte, Ont. protected to Board's satisfaction.
65887. Apr. 3—Authorizing C.P.R. to install protection at crossing of highway mileage 6.74 Winchester Subd., just west of Strathmore Station, Town of Pointe Claire, Que.
65888. Apr. 3—Authorizing C.N.R. to install protection at crossing of highway mileage 12.18 Cornwall Subd., just west of Strathmore Station, Town of Pointe Claire, Que.
65889. Apr. 4—Authorizing C.N.R. to improve sight lines at the crossing of Provincial Highway No. 25 a short distance north of Milton town limits, Township of Trafalgar, Ont.
65890. Apr. 5—Approving clearances at siding serving Canadian Cellucotton Products Company, Limited, at Niagara Falls, Ont. (C.N.R.).
65891. Apr. 6—Authorizing C.N.R. to construct siding on Parkhurst Boulevard, Leaside, Ont.
65892. Apr. 6—Authorizing C.N.R. to construct extension to siding across Concession Road between Concessions 6 & 7, Twp. of Grantham, County of Lincoln, Ont.
65893. Apr. 6—Declaring C.P.R. crossing of highway at mileage 85.45 Macleod Subd., Alta. protected to Board's satisfaction.
65894. Apr. 6—Approving Agreed Charge between the C.N.Rys., C.P.R. Co., Northern Alberta Rys. Co. and Crooked Creek Lumber Co. covering transportation of lumber and forest products between stations in Western Canada.
65895. Apr. 6—Rescinding Order No. 64620 approving clearances at siding of C.N.R. serving Libby, McNeill & Libby of Canada, Limited, at Chatham, Ont.
65896. Apr. 6—Authorizing Napierville Junction Railway Co. to construct extension to industrial track across St. Joseph Street, Village of Napierville, Que.
65897. Apr. 9—Declaring New York Central crossing of Main Street, Comber, Ont. protected to Board's satisfaction.
65898. Apr. 9—Authorizing C.P.R. to construct branch line of railway to serve Co-Operative Vegetable Oils Limited at Altona, Man.
65899. Apr. 9—Approving under Maritime Freight Rates Act tolls published in tariffs filed by Canadian Freight Association under Sec. 3.
65900. Apr. 9—Declaring C.P.R. crossing of Highway No. 80 just west of Glencoe Station, Ont. protected to Board's satisfaction.
65901. Apr. 10—Directing that C.P.R. bear entire cost of making changes to interlocking plant at its crossing of the C.N.Rys' spur mileage 65.15 Windsor Subd., Chatham, Ont.
65902. Apr. 10—Approving under Maritime Freight Rates Act tolls published in tariffs filed by C.N.R. under Sec. 3.
65903. Apr. 10—Declaring C.N.R. crossing of Mill Street, Winnipeg, Man. protected to Board's satisfaction.
65904. Apr. 10—Declaring C.N.R. crossing of Provincial Highway No. 9 second south of Cookstown Station, Ont. protected to the Board's satisfaction.
65905. Apr. 12—Approving under Maritime Freight Rates Act tolls published in tariffs filed by C.N.R. under Sec. 3.
65906. Apr. 12—Authorizing C.N.R. and Port Arthur Electric Ry. to operate their trains through interlocking plant at crossing of Fort William Road, Port Arthur, Ont.
65907. Apr. 12—Authorizing C.N.R. to install flashing light signals and bell at crossing of Haig Boulevard, Twp. of Toronto, Ont.
65908. Apr. 12—Rescinding Order No. 58168 authorizing Dept. of Highways of Ontario to construct overhead crossing of C.N.R. at mileage 72.15 Alderdale Subd., Ont.

- 65909. Apr. 12—Authorizing C.N.R. and C.P.R. Co. to operate their trains through interlocking plant at crossing of said railways near Roland, Man.
- 65910. Apr. 13—Approving clearance at sidings serving Copeland Flour Mills Limited at Midland, Ont. (C.N.R.).
- 65911. Apr. 13—Approving plan showing changes at diamond crossing of C.N.R. and Montreal Tramways at Turcot East, Que.
- 65912. Apr. 13—Approving location of pipe lines, etc., of Imperial Oil Ltd. near C.N.R. tracks at Eston, Sask.
- 65913. Apr. 13—Approving location of pipe lines, etc., of Imperial Oil Limited near tracks of C.N.R. at Spiritwood, Sask.
- 65914. Apr. 16—Approving under Maritime Freight Rates Act tolls published in tariffs filed by C.P.R. under Sec. 9.
- 65915. Apr. 13—Approving location of pipe lines, etc., of North Star Oil Limited near tracks of C.N.R. at The Pas, Man.
- 65916. Apr. 13—Approving location of pipe lines, etc., of Imperial Oil Limited near tracks of C.N.R. at Hudson Bay Junction, Sask.
- 65917. Apr. 16—Approving under Maritime Freight Rates Act tolls published in tariffs filed by C.N.R. under Sec. 3.
- 65918. Apr. 18—Authorizing Commissioner Stoneman to sign regulations, orders, etc. in the absence of the Chief Commissioner and Asst. Chief Commissioner.

NOTICES, ORDERS IN COUNCIL, ETC.

The following Order in Council is reproduced for the information of all concerned:—

P.C. 2183

PRIVY COUNCIL

CANADA

AT THE GOVERNMENT HOUSE AT OTTAWA

MONDAY, the 2nd day of April, 1945.

PRESENT:

HIS EXCELLENCY

THE GOVERNOR GENERAL IN COUNCIL:

Whereas Order in Council, P.C. 2477, of April 6, 1944, made under the provisions of subsection 2 of Section 12 of The Transport Act, 1938, exempted from the operation of Part II of the said Act, relative to Transport by Water, certain ships of Canada Steamship Lines, Limited, as therein listed, for the season of navigation of 1944 only, in respect of the transport of goods between Quebec and Montreal and intermediate ports;

And whereas the Minister of Transport reports that, under date of March 16, 1945, the Board of Transport Commissioners for Canada advised that it is in receipt of an application from the Company for further exemption in respect of the service described;

That in the said application the Company states that the ships which engage either continuously or intermittently in such service and which comprise the class of ships for which the exemption is sought, are as follows:—

PASSENGERS AND GOODS VESSELS

<i>Quebec</i>		<i>Richelieu</i>
<i>St. Lawrence</i>	<i>Saguenay</i>	<i>Tadoussac</i>
GOODS ONLY		
<i>Battleford</i>	<i>Fernie</i>	<i>Fairmount</i>
<i>Beaverton</i>	<i>Kenora</i>	<i>Grainmotor</i>
<i>Calgarian</i>	<i>Lethbridge</i>	<i>Hastings</i>
<i>Canadian</i>	<i>Saskatoon</i>	<i>Kinmount</i>
<i>City of Hamilton</i>	<i>Selkirk</i>	<i>Mapleheath</i>
<i>City of Kingston</i>	<i>Weyburn</i>	<i>Meaford</i>
<i>City of Toronto</i>	<i>Winnipeg</i>	<i>Penetang</i>
<i>City of Montreal</i>	<i>Acadian</i>	<i>Simcoe</i>
<i>City of Windsor</i>	<i>Barrie</i>	<i>Starmount</i>
<i>Edmonton</i>	<i>Elgin</i>	

That the Board of Transport Commissioners advises that the conditions under which the service is conducted do not appear to be substantially different from those existing during the season of navigation of 1944 and the Board recommends that the exemption applied for be granted;

Therefore, His Excellency the Governor General in Council, on the recommendation of the Minister of Transport, is pleased to order that ships of the Canada Steamship Lines, Limited, as above listed, be and they are hereby exempted from the operation of Part II of The Transport Act, 1938, for the season of navigation of 1945, only, in respect of the transport of goods between Quebec and Montreal and intermediate ports.

A. D. P. HEENEY,

Clerk of the Privy Council

The Board of Transport Commissioners for Canada

Judgments, Orders, Regulations and Rulings

Vol. XXXV

Ottawa, May 15, 1945

No. 4

This publication is issued fortnightly, on the 1st and 15th of each month. Annual subscription, \$3.00; single numbers, 20 cents; in quantities, 25 per cent discount. Remittances should be made to the King's Printer, Ottawa, by postal money order, express order or accepted cheque. The use of currency for this purpose is contrary to the advice of the postal authorities and entails a measure of risk. Postage stamps, foreign money or uncertified cheques will not be accepted. No extra charge is made for postage on documents forwarded to points in Canada and in the United States, but cost of postage is added to the selling price when documents are mailed to other countries. Early application should be made for copies in quantities. Subscriptions should be sent, in every case, to the King's Printer, Ottawa.

GENERAL ORDER No. 671

In the matter of the application of The Express Traffic Association of Canada for permission to ship by express samples of cordite (only) from Winnipeg, Manitoba, to Quebec and Valcartier, Quebec.

File No. 1717.12.3

WEDNESDAY, the 18th day of April, A.D. 1945.

J. A. CROSS, K.C., *Chief Commissioner.*

HUGH WARDROPE, *Assistant Chief Commissioner.*

J. A. STONEMAN, *Commissioner.*

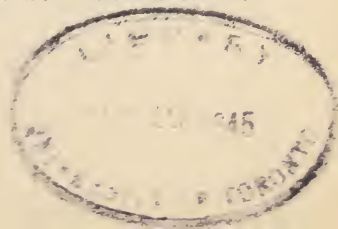
G. A. STONE, *Commissioner.*

F. M. MACPHERSON, *Commissioner.*

It is ordered: That the Regulations for the Transportation by Express of Acids, Inflammables, Oxidizing Substances, Samples of Explosives, etc., be, and they are hereby, amended by adding to paragraph numbered 26 7/8, page 8, of the said Regulations, as amended by General Orders Nos. 631, 637, 642, 660 and 668, dated respectively October 30, 1942, January 13, 1943, February 19, 1943, March 10, 1944, and November 29, 1944, the following:—

"That, during the present emergency and until further Order of the Board, samples of smokeless powder for cannon (nitro-cellulose colloid single base and nitro-cellulose and nitro-glycerine double base powder), for testing purposes only, may be shipped by express from Winnipeg, Manitoba, to Quebec and Valcartier, Quebec, when packed and shipped under the following conditions:

"(1) Each twenty (20) pound sample of powder to be wrapped in waxed liner paper, and steel service containers to be lined inside with wax paper.



"(2) Each shipment to consist of three (3) steel service containers, —two containers to contain two (2) twenty (20) pound samples of powder and one container to contain one (1) twenty (20) pound sample of powder.

"(3) Not more than 100 pounds of explosive to be shipped on any one train.

"(4) No shipments shall be made in express cars which are equipped with stoves, baker heaters or similar equipment when containing fire, and fire must not be lighted in such equipment when explosives are being transported in such cars."

J. A. CROSS,
Chief Commissioner.

CIRCULAR No. 261R

File 28638.2.485

OTTAWA, May 3, 1945

The first paragraph of the Board's Circular 253R of February 26, 1942, is rescinded and the following inserted in its stead:

It is not now necessary for a copy of approval from the Oil Controller to accompany applications to the Board for the installation of additional storage tanks at an already established plant, but copy of approval of the Oil Controller must accompany application in connection with installation of *new bulk storage plants*.

Circular No. 248R, dated January 13, 1941, is also amended by striking out the words "or additional" in the third and fourth lines.

By order of the Board,

P. F. BAILLARGEON,
Secretary.

ACCIDENTS REPORTED TO THE OPERATING DEPARTMENT BOARD OF TRANSPORT COMMISSIONERS FOR CANADA, MARCH, 1945

Railway accidents 145 with 17 killed and 242 injured
Level crossing accidents 26 with 5 killed and 30 injured

	Killed	Injured
Passengers	2	121
Employees	5	116
Others	15	35
Totals.....	22	272

DETAILS OF ACCIDENTS AT HIGHWAY CROSSING

Accidents	K.	I.	
NOVA SCOTIA			
1	-	2	Auto taxi drove onto crossing in front of approaching train and was struck. Licence N.S. 7-01-99.
1	-	1	Automobile drove onto crossing in front of approaching train and was struck. Licence N.S. 60689.
1	-	2	Auto truck drove onto crossing in front of approaching train and was struck. Licence N.S.C-12062.
NEW BRUNSWICK			
1	-	1	Automobile ran into side of train. Licence N.B. 22372.
1	-	1	Auto truck drove onto crossing in front of approaching train and was struck. Licence N.B. C-2297.
QUEBEC			
1	-	3	Auto truck drove onto crossing in front of approaching train and was struck. Licence Que. F-23433.
1	-	1	Automobile ran into side of train. Licence Que. 133502.
ONTARIO			
1	2	-	Automobile drove onto crossing in front of approaching train and was struck. Licence Ont. 2-Z-297.
1	-	1	Automobile ran into side of train. Licence Ont. 620-H-3.
1	1	-	Pedestrian walked onto crossing in front of approaching train and was struck.
1	-	2	Automobile ran into side of train. Licence Ont. B-97-V-90.
1	-	1	Automobile drove onto crossing in front of approaching train and was struck. Licence Ont. 4-F-541.
1	1	-	Boy watching passing freight train, failed to stand clear of train coming in opposite direction and was struck.
1	-	1	Pedestrian walked onto crossing in front of approaching train and was struck.
1	1	-	Auto truck drove onto crossing in front of approaching train and was struck. Licence Ont. 33057-C.
1	-	2	Auto truck drove onto crossing in front of approaching train and was struck. Licence Ont. 5697-C.
1	-	1	Automobile drove onto crossing in front of approaching train and was struck. Licence Ont. 9-J-344.
1	-	1	Automobile drove onto crossing in front of approaching train and was struck. Licence Ont. 96-V-96.
1	-	1	Pedestrian walked onto crossing in front of approaching train and was struck.
1	-	2	Automobile ran into side of train. Licence not given.
1	-	1	Auto truck drove onto crossing in front of approaching train and was struck. Licence Ont. 37471-C.
MANITOBA			
1	-	1	Auto truck drove onto crossing in front of approaching train and was struck. Licence not given.
SASKATCHEWAN			
1	-	1	Horse-drawn vehicle drove onto crossing in front of approaching train and was struck.
ALBERTA			
1	-	1	Automobile drove onto crossing in front of approaching train and was struck. Licence Alta. 27-217.
1	-	1	Automobile ran into side of train. Licence Alta. 15909.
BRITISH COLUMBIA			
1	-	2	Automobile ran into side of train. Licence B.C. 37212.

Of the 26 accidents at highway crossings, 21 occurred at unprotected crossings and 5 at protected crossings. Seventeen of the accidents occurred after sunrise and nine after sunset.

SUMMARY OF ORDERS ISSUED BY THE BOARD

- 65919 Apr. 18—Declaring C.N.R. crossing of Greenwich St., City of Brantford, Ont. protected to Board's satisfaction; present speed limitation of ten miles per hour to be maintained.
- 65920 Apr. 18—Authorizing C.N.R. to reconstruct bridge over White River, at mileage 59·9 Batiscan Subd., Que.
- 65921 Apr. 18—Declaring Grand River Ry. crossing of Courtland Avenue, mileage 11·9 Waterloo Subd., Kitchener, Ont. protected to the satisfaction of the Board; present speed limitation of ten miles per hour to be maintained.
- 65922 Apr. 19—Declaring Lake Erie & Northern Ry. crossing of Grand River Avenue, City of Brantford, Ont. protected to the Board's satisfaction; present speed limitation of ten miles per hour to be maintained.
- 65923 Apr. 20—Approving under Maritime Freight Rates Act tolls published in tariffs filed by C.N.R. under Sec. 3.
- 65924 Apr. 20—Approving relocation of C.P.R. Co's. station at Port Moody, B.C.
- 65925 Apr. 20—Declaring C.P.R. crossing of highway mileage 2·48 Tisdale Subd., Sask. protected to Board's satisfaction.
- 65926 Apr. 23—Approving location of warehouse of Imperial Oil Ltd., near C.N.R. tracks at Viking, Alta.
- 65927 Apr. 23—Approving concrete lining of tunnel of C.N.Rys. at mileage 80·4 Ashcroft Subd., B.C.
- 65928 Apr. 23—Authorizing C.P.R. to reconstruct bridge across public road at mileage 24·84 Kaslo Subdivision, B.C.
- 65929 Apr. 23—Approving clearances at siding serving Wilson Coal Co. at Truro, N.S. (C.N.R.).
- 65930 Apr. 23—Dismissing application of C.N.R. for an Order authorizing them to operate over siding serving Dept. of National Defence, Naval Service, at mileage 16·75 Nashwaak Subd., at McCann, N.B.
- 65931 Apr. 23—Declaring C.P.R. crossing of Highway No. 1 first east of Prince of Wales Station, N.B. protected to Board's satisfaction.
- 65932 Apr. 23—Approving under Maritime Freight Rates Act tolls published in tariffs filed by C.P.R. under Sec. 9.
- 65933 Apr. 24—Declaring C.N.R. crossing of Pleasant St., Town of North Sydney, N.S. protected to Board's satisfaction.
- 65934 Apr. 24—Approving Traffic Agreement between The Bell Telephone Co. of Canada and The Corporation of the Township of North Gosfield.
- 65935 Apr. 24—Declaring C.N.R. crossing of highway first east of Marshy Hope Station, N.S. protected to Board's satisfaction.
- 65936 Apr. 24—Approving clearances of overhead carrier and hopper in mill yard of Fraser Companies Limited at Cabano, Que. (T.R.C.).
- 65937 Apr. 24—Declaring Dominion Atlantic Ry. crossing of Main Street West first about one-third of a mile west of Kentville Station, N.S. protected to Board's satisfaction.
- 65938 Apr. 25—Approving location of pipe lines, etc., of Imperial Oil Ltd. near C.N.R. tracks at Preeceville, Sask.
- 65939 Apr. 25—Declaring Père Marquette Ry. crossing of Maillot side road two miles east of Leamington, Ont. protected to Board's satisfaction.
- 65940 Apr. 25—Declaring C.P.R. crossing of highway first west of station at Fleming, Sask. protected to Board's satisfaction.
- 65941 Apr. 25—Declaring C.N.R. crossing of Aberdeen Street first north of Bridgewater Station, N.S. protected to Board's satisfaction, crossing to be protected by watchmen and a speed limitation of ten miles per hour to be in effect.
- 65942 Apr. 25—Declaring C.N.R. crossing of Adelaide Street in the Village of Mount Brydges, Ont. protected to Board's satisfaction.
- 65943 Apr. 26—Declaring C.P.R. crossing of Lee Street, Portage la Prairie, Man. protected to Board's satisfaction; crossing to be protected by a trainman.
- 65944 Apr. 26—Authorizing C.N.R. and Grand River Railway Co. to operate their trains through interlocking plant near Dundas and Beverly Sts., City of Galt, Ont.
- 65945 Apr. 26—Approving clearances at siding serving United Drug Co. Ltd. at Toronto, Ont. (C.N.R.).

- 65946 Apr. 26—Declaring C.N.R. crossing of Haig Boulevard at mileage 10·58 Oakville Subd., Ont. protected to Board's satisfaction.
- 65947 Apr. 27—Extending time within which the C.N.R. were required to install two wigwags and one bell at crossing of Norwich Street, Woodstock, Ont.
- 65948 Apr. 27—Extending time within which the C.N.R. were required to install an additional wigwag signal at crossing of Wilson Street, Woodstock, Ont.
- 65949 Apr. 27—Approving Traffic Agreement between The Bell Telephone Co. of Canada and the Allenford Rural Telephone Co. Ltd.
- 65950 Apr. 27—Declaring C.N.R. crossing of Union Street in the Town of Simcoe, Ont. protected to Board's satisfaction; present speed limitation of ten miles per hour to be maintained and all switching movements to be flagged by one of the trainmen.
- 65951 Apr. 27—Declaring C.N.R. crossing of Victoria Ave., first immediately south of Fort William Station, Ont. protected to Board's satisfaction; present speed limitation of ten miles per hour to be maintained.
- 65952 Apr. 27—Approving under Maritime Freight Rates Act tolls published in tariffs filed by Canadian Freight Association under Secs. 3 and 9.
- 65953 Apr. 28—Declaring C.N.R. crossing of Dundas Street, London, Ont. protected to Board's satisfaction.
- 65954 Apr. 30—Approving under Maritime Freight Rates Act tolls published in tariffs filed by Dominion Atlantic Ry. Co. under Sec. 9.
- 65955 Apr. 30—Dismissing application of New York Central Railroad for approval of clearances of crane runway over side tracks serving Page Hersey Tubes Ltd. at Welland, Ont.
- 65956 Apr. 30—Authorizing C.P.R. to construct two branch lines of railway to serve the Kalamazoo Vegetable Parchment Co. at mileage 1·8 Little Current Subd., in the Townsite of Espanola, Twp. of Merritt, Dist. of Sudbury, Ont.
- 65957 Apr. 30—Approving Traffic Agreement between The Bell Telephone Co. of Canada and the Syndicat Coopératif de Téléphone de Valcourt.
- 65958 Apr. 30—Approving resolution of The International Bridge and Terminal Co. authorizing the Traffic Manager to prepare and issue tariffs of tolls to be charged by Applicant Co.
- 65959 Apr. 30—Authorizing Algoma Central and Hudson Bay Railway Co. to construct branch line of railway from mileage 6·6 on the Michipicoten Branch of its railway to the plant of Michipicoten Iron Mines Ltd. at Josephine Mines, Ont.
- 65960 Apr. 30—Extending time within which C.P.R. was required to install and maintain two flashing light signals and one bell at crossing of highway east of Bourget Station, Ont.
- 65961 Apr. 30—Extending time within which C.P.R. was required to install automatic flashing lights and bell at crossing of Route No. 17 in the Parish of Ste-Madeleine de Rigaud, County of Vaudreuil, Que.
- 65962 May 1—Approving Supplement No. 2 to agreement between The Bell Telephone Co. of Canada and Adrien Phaneuf (Proprietor of Le Système de Téléphone Phaneuf).
- 65963 May 1—Approving clearances of warehouse located on siding of Manitoba Cartage & Storage Limited, Winnipeg, Man. (C.P.R.).
- 65964 May 2—Authorizing Dept. of Highways for Ontario and its contractors, etc., to use roadway on bridge over Little Current Channel between Goat and Manitoulin Islands, Ont.
- 65965 May 1—Authorizing C.N.R. to construct a highway crossing of their existing l'Assomption Subd. at 64th Avenue, Town of Pointe-aux-Trembles, Que.
- 65966 May 1—Approving location and details of C.N.Rys' station at Pointe-aux-Trembles on their Eastern Junction-Bout de l'Île Line, Que.
- 65967 May 2—Authorizing C.P.R. to construct branch line of railway in the Cadastral Parish of St. Laurent, Town of Mount Royal, County of Jacques Cartier, Que.

The Board of Transport Commissioners for Canada

Judgments, Orders, Regulations and Rulings

Vol. XXXV

Ottawa, June 1, 1945

No. 5

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ORDER No. 65958

In the matter of the application of The International Bridge and Terminal Company, hereinafter called the "Applicant Company", under Section 323 of the Railway Act, for approval of a resolution adopted by the Board of Directors of the Applicant Company on April 24, 1945, authorizing the Traffic Manager of the Applicant Company to prepare and issue tariffs of the tolls to be charged by the Applicant Company, and to submit the same to and file the same with the Board.

File No. 17421.4

MONDAY, the 30th day of April, A.D. 1945.

J. A. STONEMAN, *Commissioner.*

G. A. STONE, *Commissioner.*

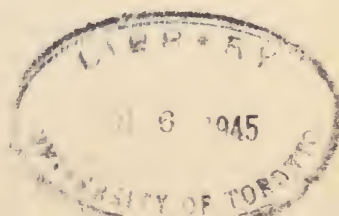
Upon the recommendation of the Assistant Director, Traffic Department of the Board—

It is ordered:

1. That the said resolution of the Applicant Company, adopted on April 24, 1945, on file with the Board under file No. 17421.4, be, and it is hereby, approved.

2. That Order No. 54288, dated May 11, 1937, made herein, be, and it is hereby, rescinded.

J. A. STONEMAN,
Commissioner.



ORDER No. 65967

In the matter of the application of the Canadian Pacific Railway Company, as lessee exercising the franchises of the Ontario and Quebec Railway Company, hereinafter called the "Applicant Company", under Sections 180 to 184 inclusive and 312 of the Railway Act, for authority to construct, maintain and operate a branch line of railway in parts of Lots 576, 577, 578, 579 and 580, Cadastral Parish of St. Laurent, Town of Mount Royal, County of Jacques Cartier, Province of Quebec, at mileage 46.30 Adirondack Sub-division, all as shown in red on the plan and profile and described in the book of reference combined No. 890, dated Montreal, April 25, 1945—deposited in the Registry Office of Montreal on April 30, 1945, as No. 864—on file with the Board under file No. 23202.3.

WEDNESDAY, the 2nd day of May, A.D. 1945.

J. A. STONEMAN, *Commissioner.*

G. A. STONE, *Commissioner.*

Upon hearing the application at the sittings of the Board held at Montreal on the 6th day of February, 1945, in the presence of Counsel for the Applicant Company and the Canadian National Railways, and what was alleged, the Applicant Company having filed proof of its title to that portion of Lot 75, according to the plan and book of reference of the Parish of Montreal, on which the Applicant Company's Blue Bonnet siding is constructed; publication of notice of the application being hereby dispensed with—

It is ordered:

1. That the Applicant Company be, and it is hereby, authorized to construct, maintain and operate a branch line of railway in parts of Lots 576, 577, 578, 579 and 580, Cadastral Parish of St. Laurent, in the Town of Mount Royal, County of Jacques Cartier, and Province of Quebec, at mileage 46.30 Adirondack Sub-division, as shown in red on the said plan and profile and described in the book of reference combined on file with the Board under file No. 23202.3.

2. That the branch line of railway hereby authorized be constructed and completed within six months from the date of this Order.

J. A. STONEMAN,
Commissioner.

SUMMARY OF ORDERS ISSUED BY THE BOARD

- 65968. May 3—Declaring C.P.R. crossing of Regent Street third west of Sudbury Station, Ont. protected to Board's satisfaction.
- 65969. May 3—Approving under Maritime Freight Rates Act tolls published in tariffs filed by C.N.R. under Sec. 3.
- 65970. May 3—Declaring C.N.R. crossing of Highway No. 2 first west of River Glade Station, N.B. protected to Board's satisfaction.
- 65971. May 3—Amending Order No. 65852 authorizing C.P.R. to operate a branch line of railway to serve the Canadian Structural Steel Works Company, Ltd., Incorporated Village of Cote de la Visitation, Montreal, Que.
- 65972. May 3—Extending time within which C.P.R. was required to install protection at the crossing of highway just west of Strathmore Station, Town of Pointe Claire, Que.
- 65973. May 3—Authorizing C.N.R. to appoint and maintain station agent at La Durantaye, Que., for twelve months in each year.
- 65974. May 3—Authorizing C.P.R. to construct branch line of railway to serve Tweed Steel Works Limited at mileage 62.5 Havelock Subd., in the Village of Tweed, Ont.
- 65975. May 3—Declaring C.P.R. crossing of Union Point Road second east of Fairville Station, N.B. protected to Board's satisfaction; present speed limitation of ten miles per hour to be maintained.
- 65976. May 3—Declaring C.P.R. crossing of highway first north of Streetsville Station, Ont. protected to Board's satisfaction.
- 65977. May 3—Extending time within which New York Central Railroad Co. was required to install flashing light signals and bells at crossing of Talbot Street, Essex, Ont.
- 65978. May 4—Declaring C.N.R. crossing of Ninth Avenue first west of Company's connection to its main track, Iberville, Que. protected to Board's satisfaction; present speed limitation of ten miles per hour at crossing to be maintained.
- 65979. May 4—Approving location and details of C.P.R. Co's station at Marathon, Ont., mileage 63.5 Heron Bay Subd.
- 65980. May 5—Approving location of pipe lines, etc., of Grandview Co-operative Oil and Supplies Limited near tracks of C.N.R. at Grandview, Man.
- 65981. May 5—Approving under Maritime Freight Rates Act tolls published in tariffs filed by C.N.R. under Sec. 3.
- 65982. May 5—Approving under Maritime Freight Rates Act tolls published in tariffs filed by C.P.R. under Sec. 9.
- 65983. May 5—Approving location of pipe lines, etc., of Landis-Co-operative Association Limited near C.N.R. tracks at Landis, Sask.
- 65984. May 5—Approving location of pipe lines, etc., of Imperial Oil Limited near C.N.R. tracks at Kapuskasing, Ont.
- 65985. May 7—Approving under Maritime Freight Rates Act tolls published in tariffs filed by the Cumberland Railway & Coal Company under Sec. 9.
- 65986. May 5—Authorizing C.P.R. to construct a spur track at grade across Main Street, Osoyoos, B.C.
- 65987. May 7—Declaring C.P.R. crossing of Avenue "H", City of Saskatoon, Sask. protected to Board's satisfaction; present speed limitation of ten miles per hour to be maintained.
- 65988. May 7—Declaring C.P.R. crossing of Union Street, West Saint John, N.B. protected to Board's satisfaction; present speed limitation of ten miles per hour to be maintained.
- 65989. May 10—Approving under Maritime Freight Rates Act tolls published in tariffs filed by Sydney & Louisburg Railway Company under Sec. 9.
- 65990. May 10—Authorizing C.N.R. to reconstruct bridge over Rosebud River, mileage 65.9 Drumheller Subd., Alta.
- 65991. May 10—Authorizing C.P.R. to construct its tracks at grade across new road in Lot No. 469, Similkameen Division, of Yale Dist., B.C., at mile 32.95 Osoyoos Subd.
- 65992. May 10—Authorizing C.P.R. to divert road between Lots Nos. 764 and 765, Similkameen Division of Yale District, B.C.
- 65993. May 10—Authorizing C.P.R. to divert road between Lots Nos. 489 and 660, Similkameen Division of Yale District, B.C.

- 65994. May 10—Authorizing C.P.R. to divert road between Lots Nos. 765 and 755, Similkameen Division of Yale District, B.C.
- 65995. May 10—Authorizing C.P.R. to divert highway between Lot 416 in the Similkameen Division of Yale Dist., B.C. at mile 30.27 and Lot 447, at mile 32.17 Osoyoos Subd.
- 65996. May 10—Authorizing Dept. of Public Works, Province of Alta. to construct highway crossing of Northern Alberta Railways at mile 103.2 Lac la Biche Subd., Alta.
- 65997. May 11—Authorizing C.P.R. to construct branch line extension to serve Hoyt Hardware Ltd. in the City of Lethbridge, Alta.
- 65998. May 11—Authorizing C.N.R. to construct highway diversion in the Northeast Quarter of Sec. 12, Twp. 32, Rge. 27 W. 2M., Sask.
- 65999. May 11—Approving removal of all horizontal tanks from site of Imperial Oil Ltd. near C.N.R. tracks at Edson, Alta. and erection of three vertical tanks in their place.
- 66000. May 11—Declaring C.P.R. crossing of highway first west of Balgonie Station, Sask. protected to Board's satisfaction.
- 66001. May 12—Approving under Maritime Freight Rates Act tolls published in tariffs filed by C.N.R. under Sec. 3.
- 66002. May 11—Declaring C.P.R. crossing of highway second north of Vernon Station, B.C. protected to Board's satisfaction.
- 66003. May 12—Declaring C.P.R. crossing of highway first west of Birchton Station, Que. protected to Board's satisfaction.
- 66004. May 12—Authorizing C.P.R. to remove station agent at Lochalsh, Ont. subject to the condition that a caretaker be appointed.
- 66005. May 14—Approving C.N.R. plan showing the connection of their Bout de l'Île line with the interlocker at Eastern Junction.
- 66006. May 14—Exempting C.P.R. from submitting plan, etc. for approval of the Board, showing deviations in a portion of branch line extension from Haynes to Osoyoos, mile 26.82 to 36.40, B.C.
- 66007. May 15—Authorizing C.P.R. to construct branch line of railway to serve Kamloops Ice & Cold Storage Company, Limited, at mileage 127.99 Shuswap Subd. in the City of Kamloops, B.C.
- 66008. May 15—Authorizing C.N.R. to operate under Parson's Bridge, Vancouver Island, B.C.
- 66009. May 15—Declaring C.N.R. crossing of Timothy Street, Newmarket, Ont. protected to Board's satisfaction.
- 66010. May 16—Approving under Maritime Freight Rates Act tolls published in tariffs filed by C.P.R. under Sec. 9.
- 66011. May 16—Declaring New York Central Railroad crossing of Clifton Hill Road immediately south of Victoria Park Station, Niagara Falls, Ont. protected to Board's satisfaction; present speed limitation of ten miles per hour to be maintained.

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The Board of Transport Commissioners for Canada

Judgments, Orders, Regulations and Rulings

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No. 6

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Application of the Brotherhood of Locomotive Engineers, by H. B. Chase, Esq., for a decision as to whether or not the operation of light engines (pusher engines) by Canadian Pacific Railway Company from Revelstoke to Glacier, British Columbia, without a conductor, is in accordance with the Board's Orders and particularly General Order No. 236, dated May 20, 1918; and

Application of Canadian Pacific Railway Company for an Order stating that the operation of light engines between Glacier and Revelstoke, British Columbia, as at present conducted is in accordance with the terms of the Board's General Order No. 236, or in the alternative for an Order exempting this operation of light engines from Glacier to Revelstoke without conductors, from the provisions of General Order No. 236.

File No. 44021

Mr. H. B. CHASE and Mr. J. B. WARD represented the Brotherhood of Locomotive Engineers;

Mr. WILLIAM L. BEST, C.B.E., the Brotherhood of Locomotive Firemen and Enginemen;

Mr. J. HAMMOND, the Brotherhood of Railroad Trainmen; and

Mr. W. G. BAKER, the Order of Railway Conductors.

Mr. J. A. WRIGHT appeared for the Canadian Pacific Railway Company.

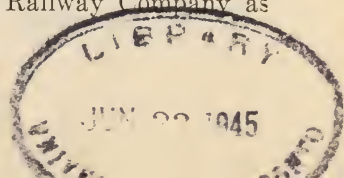
Heard at Revelstoke, in the Province of British Columbia, on April 26, 1945

JUDGMENT

CROSS, *Chief Commissioner:*

The two applications here involved may appropriately be dealt with together.

For convenience, the Brotherhood of Locomotive Engineers, the Brotherhood of Locomotive Firemen and Enginemen, the Brotherhood of Railroad Trainmen, and the Order of Railway Conductors are hereafter referred to together as the Brotherhoods, and the Canadian Pacific Railway Company as the Railway Company.



The Brotherhoods contend that the Railway Company, by the operation of its light engines from Glacier to Revelstoke, in British Columbia, without a conductor, have been and are violating the provisions of Section 3 of the Board's General Order No. 236, dated May 20, 1918, and ask for a ruling of the Board accordingly.

The Railway Company, on the other hand, disputes this contention and applies for an Order stating that the operation of its light engines between Glacier and Revelstoke as at present conducted is in accordance with the terms of said General Order No. 236, or, in the alternative, for an Order exempting this operation of light engines from Glacier to Revelstoke without conductors from the provisions of General Order No. 236.

Section 3 of the Board's General Order No. 236, dated May 20, 1918, reads as follows:

"3. No light engine, nor two or more light engines coupled, when the movement is either on a single track or against the current of traffic on a double track, shall be run a greater distance than twenty-five miles in any one direction without a conductor appointed for service as such and possessed of the qualifications set out in paragraph (b) of Section 5 of this Order."

It would seem convenient to deal with the facts applicable to both cases, at the one time.

The line of railway between Revelstoke and Glacier runs through difficult mountainous country, with many curves in the line, some of which are quite sharp. The grade on the line is steep. It is roughly an average of 1.4 per cent between Revelstoke and Albert Canyon and 2.2 per cent from Albert Canyon to the top of the hill at Glacier. This condition requires that special care be taken in the operation of trains over the portion of the railway in question. As a measure of safety, the Railway Company maintains in effect maximum speed limitations at which the trains on the section of railway may be operated. The line of railway is single track, and is equipped throughout with automatic block signals.

Owing to heavy up grades, to assist in the movement of its trains, the Railway Company operates oil burner pusher or assisting engines from Revelstoke to Glacier, British Columbia, a distance of 40.2 miles.

On the return movement from Glacier to Revelstoke the pusher or assisting engines are run light without a conductor. The crew of each such engine consists of an engineer and fireman. These engines are given running orders from Glacier to Albert Canyon, a distance of 19.3 miles, and a fresh set of orders from Albert Canyon to Revelstoke, a distance of 20.9 miles. This practice of giving two sets of running orders has been in effect for many years. It was originated at the time the Railway Company adopted the plan of assisting its trains from Revelstoke to Glacier instead of from Albert Canyon to Glacier only. Prior to this time one running order was given for the return movement of a light engine from Glacier to Albert Canyon.

With the inauguration by the Railway Company of the plan to assist trains from Revelstoke to Glacier the method of issuing the orders was not changed, and assisting engines continued to receive orders at Glacier for their movement to Albert Canyon, and were given another set at Albert Canyon to take them to Revelstoke. One reason for this is that, on a number of occasions, the return movement of the pusher engine from Glacier to Revelstoke is intercepted at Albert Canyon and the engine used for a second assist from Albert Canyon to Glacier.

Statements filed by the Railway Company show the number of times assisting engines moved from Glacier to Albert Canyon and then returned to Glacier and, also, movements from Glacier to Revelstoke direct during the year 1944

and the first three months of 1945, as follows:—Glacier to Albert Canyon 412 times, and Glacier to Revelstoke 2,734 times.

On behalf of the Railway Company it is submitted that in the movement of light assisting engines from Glacier to Revelstoke there are two distinct trips. That there is a trip from Glacier to Albert Canyon which is conducted under one set of running orders; and a second trip from Albert Canyon to Revelstoke which is made under another set of running orders, each trip being under twenty-five miles; and that, consequently, there is no violation of General Order No. 236.

As intimated at the hearing, the Board is unable to agree with this contention. The movement of a light engine from Glacier to Revelstoke, a distance of 40.2 miles, constitutes but one movement or trip, on a single track in the same direction, and such movement without a conductor, in my opinion, is a violation of the provisions of Section 3 of the Board's General Order No. 236. The fact that two separate running orders are issued cannot, I think, have any bearing on the matter.

To accept the interpretation of Section 3 suggested on behalf of the Railway Company would permit the movement of such engines for unlimited distances in the one direction without a conductor merely by the issue of a series of running orders, each of which covered a distance not exceeding twenty-five miles. In my view, the provisions of the section do not permit of any such an interpretation.

The decision of the Board is, therefore, that the operation of light engines between Glacier and Revelstoke, in the Province of British Columbia, as at present conducted by Canadian Pacific Railway Company, without conductors, is not in accordance with, but is in violation of the terms of the Board's General Order No. 236, dated May 20, 1918.

There remains for consideration the alternative application of the Railway Company for an Order exempting its operation of light engines from Glacier to Revelstoke, in the Province of British Columbia, without conductors, from the provisions of the Board's General Order No. 236, dated May 20, 1918.

The main relevant facts are set out above and need not be repeated here.

Counsel for the Railway Company submits that General Order No. 236 should admit of exemptions where circumstances permit, and the safety of the public or the safety of the employees, as in the present case, would not, in any way, be prejudiced or affected by a conductor not being on the engine.

In support of its application for an exemption, the Railway Company stresses, as a safety feature, the fact that the line of railway is equipped throughout with automatic block signals, and point, as the fact is, to the favourable record in respect to accidents which have occurred between Revelstoke and Glacier, in which light engines unaccompanied by conductors were involved, during the period between January 1, 1918, to April 26, 1945. During this period there were only three reported accidents, one on August 11, 1919, one on March 18, 1920, and the other on August 9, 1943. The first two were only near accidents, as the light engine and the train concerned each succeeded in coming to a stop before a collision occurred.

On behalf of the Railway Company it is pointed out that, to provide conductors for light engine movements from Glacier to Revelstoke would require a pool of six conductors or trainmen, which would reduce the number of men available to handle passengers and freight trains, which the Railway Company can ill afford to do under present conditions. It is well known that the railway companies, due to the war, have had great difficulty in obtaining sufficient men to handle their operations. But I do not think that the problem of providing the additional men is so great that it cannot be met. The additional cost to the Railway Company of providing conductors for the light engines is estimated at \$19,889.92 per year.

The Brotherhoods contend that, in the interest of greater safety in operation of the light engines, a conductor as well as an engineer and fireman is necessary. In this connection they refer, among other things, to a case where it may be necessary to flag both the front and rear of an engine. Without a conductor, in such a case, the engine must be left standing on the track wholly unattended. Such a situation may arise, but from the evidence it appears that the occasions are very infrequent.

Our attention was also called to the fact that, where there is no conductor, the fireman is obliged to get down from the engine to throw the switches. Apart from the wye and other switches at meeting points, the fireman must throw six switches in the Revelstoke yard, to get the engine into the shop track.

Order No. 236 is of general application, and applies to all railways under the jurisdiction of the Board. The Brotherhoods submit that to grant the application of the Railway Company would lead to other similar applications, and tend to defeat the purpose for which Section 3 of the Order was enacted. It is also pointed out that the Order does not contain any provision for the granting of exemptions from its operation. And, because of this, the Brotherhoods urge that exceptions to the Order were not contemplated and should not be allowed.

At the hearing we were also favoured with a comprehensive historical review of the circumstances which lead up to the passing of Section 3 of the Order, in its present form.

We are not here concerned with any general review of the terms and conditions of the Order. All that is before us is the specific application of the Railway Company. Upon consideration of all that has been placed before us, I think that the application should be dismissed. There will be an Order accordingly.

OTTAWA, May 19, 1945.

J. A. CROSS.

I concur:

HUGH WARDROPE,
FRANK M. MACPHERSON.

ORDER No. 66036

In the matter of the application of the Brotherhood of Locomotive Engineers for a decision as to whether or not the operation of light engines (pusher engines) by the Canadian Pacific Railway Company from Revelstoke to Glacier, British Columbia, without a conductor is in accordance with the Board's orders, and particularly General Order No. 236 dated May 20, 1918;

And in the matter of the application of the Canadian Pacific Railway Company for an order stating that the operation of light engines between Glacier and Revelstoke, British Columbia, as at present conducted is in accordance with the terms of the Board's General Order No. 236, or, in the alternative, for an Order exempting this operation of light engines from Glacier to Revelstoke, without conductors, from the provisions of General Order No. 236;

File No. 44021

MONDAY, the 21st day of May, A.D. 1945.

J. A. CROSS, K.C., *Chief Commissioner.*
HUGH WARDROPE, *Asst. Chief Commissioner.*
F. M. MACPHERSON, *Commissioner.*

Upon hearing the matter at the sittings of the Board held at Revelstoke, B.C., on April 26, 1945, in the presence of Counsel for and representatives of

the Brotherhood of Locomotive Engineers, the Brotherhood of Locomotive Firemen & Enginemen, the Order of Railroad Conductors, the Brotherhood of Railroad Trainmen, and the Canadian Pacific Railway Company, and what was alleged,—

It is declared: That the operation of light engines between Glacier and Revelstoke, in the Province of British Columbia, as at present conducted by the Canadian Pacific Railway Company, without conductors, is in violation of the terms of the Board's General Order No. 236 dated May 20, 1918.

And it is ordered that the application of the Canadian Pacific Railway Company be, and it is hereby, dismissed.

J. A. CROSS,
Chief Commissioner.

Application of the Department of Public Works of the Province of Manitoba for an Order granting it leave to construct a highway across the railway of the Canadian National Railways on Third Street, Birch River Station, Manitoba, on S.W. $\frac{1}{4}$ Sec. 35-39-26 W., as shown on a plan, No. F. 275, on file with the Board under File No. 43972, and apportioning the cost of construction and maintenance of the crossing. File No. 43972

Mr. L. J. C. Elliott appeared for the Department of Public Works of the Province of Manitoba, and

Mr. A. K. Dysart and Mr. W. J. B. Grierson for Canadian National Railways.

Heard at Winnipeg, Man., on Monday, April 30, 1945.

JUDGMENT

CROSS, *Chief Commissioner:*

This is an application of the Department of Public Works, of the Province of Manitoba, hereinafter referred to as the Applicant, for an Order granting it leave to construct a highway across the railway of the Canadian National Railways, hereinafter referred to as the Railways, on Third Street, Birch River Station, in the Province of Manitoba, on the South West Quarter of Section 35, in Township 39, Range 26, West of the First Principal Meridian, as shown on a plan, No. F. 275, dated January, 1944, on file with the Board under File No. 43972, and apportioning the cost of construction and maintenance of the said crossing.

The location plan including the portion of the railway in question was approved by Order in Council P.C. 2551 on January 5, 1901. The plan was filed with the Department of Railways and Canals on March 6 of the same year, and was registered in the Land Titles Office at Portage la Prairie, Manitoba, on March 21, 1901. The railway was constructed in the vicinity of Birch River in the year 1899. At the time of construction of the railway provision was made for a station ground at Birch River but no buildings were erected or development carried out. In the year 1911 the predecessors in interest of the Railways constructed a small station shelter at Birch River.

In or about the year 1917 the Department of the Interior of Canada subdivided a portion of Legal Subdivisions 3 and 4, in said Section 35, Township 39, Range 26, West of the Principal Meridian, in the Province of Manitoba, for the purpose of a townsite, known as the Townsite of Birch River, which townsite is located partly on each side of the railway. No public highway crossing of the railway was provided for at the time that the townsite was laid out. The townsite was put on the market for sale of lots by the Department of the Interior, in or about the year 1919.

The population of the hamlet of Birch River is now about three hundred and fifty. Part of the inhabitants reside on the west side and part on the east side of the railway right-of-way. The only crossing, at present, over the railway within the hamlet is by means of a private crossing furnished and maintained by the Railways and wholly on the property of the Railways. This private crossing is situate about one hundred and twenty-five feet north of the proposed crossing.

The proposed crossing, if constructed, will in addition to meeting the needs of the residents of the hamlet of Birch River, form a connection between the east and west main road to Lenswood and Swan Lake, and Lorne Avenue, which runs north and south, as shown on the plan and which forms a part of Provincial Highway No. 10.

As was intimated at the hearing, it is clear that the proposed public crossing over the railway is necessary. The Railways agree to the construction of the crossing, but contend that the whole of the cost of construction and maintenance of the crossing, and of moving the section house, should be borne by the Applicant.

The Applicant agrees to pay the cost of constructing the crossing and the cost of moving the section house but submits that, under the facts and circumstances present here, the cost of maintaining the crossing should be upon the Railways. This leaves only for consideration the question of who should pay the maintenance cost.

In support of its submission the Applicant, among other things, asserts that, on the construction of the proposed crossing, the private crossing of the Railways can be closed and the Railways thereby relieved of the cost of maintaining that crossing. That for this reason the Railways should be required to bear the cost of maintenance of the proposed crossing, in the place of the private crossing. On the other hand, the Railways say that the private crossing will still be necessary and that it will continue to be used. On the evidence before us I am unable to find that the private crossing can be dispensed with, on the opening up of the public crossing. It is not shown, nor is it asserted that the private crossing furnished by the Railways is insufficient accommodation for the purposes of the Railways or for that portion of the public having business with the Railways at Birch River.

The Applicant seeks to open a highway crossing over the railway of Canadian National Railways. The crossing will be a new public right over the privately owned right of way of the Railways. Where a municipality or other highway authority seeks to open a crossing over a railway, as in this case, and the property of the railway is thus made subject to a road across it and its use, the uniform practice is to put the whole of the cost of construction and maintenance upon the Applicant:

Mission District Board of Trade v. C.P.R. (1912), 14 C.R.C. 331; Lachine v. G.T.R. (1915), 18 C.R.C. 385; Mont Laurier v. C.P.R. (1915), 18 C.R.C. 387; Saskatchewan Board of Highway Com's v. C. Nor. R. Co. (1915), 28 D.L.R. 559, 19 C.R.C. 295; Pontiac v. C.P.R. (1915), 19 C.R.C. 298; London v. G.T.R. (1915), 20 C.R.C. 242; Sasman v. C. Nor. R. (1916), 20 C.R.C. 246; New Westminster, B.C., v. Great Northern R. Co. & C.P.R. (1940), 51 C.R.C. 328.

I am unable to find any sufficient reason to warrant us in a departure from the long established practice, in the present case.

I would grant the application of the Department of Public Works of the Province of Manitoba for leave to construct a public highway crossing across the railway of the Canadian National Railways on Third Street, in the hamlet of Birch River, in the Province of Manitoba, on the South West Quarter of Section 35, in Township 39, Range 26, West of the First Principal Meridian, as shown on a plan and profile, No. F. 275, dated January, 1944, on file with the Board under File No. 43972; the said crossing to be constructed in accordance with the Standard Regulations of the Board Affecting Highway Crossings.

As to costs, I would direct that all costs of construction of the crossing, including the cost of removing the section house, and all costs of maintenance of the crossing be borne and paid by the Applicant, the Department of Public Works of the Province of Manitoba.

Dated Ottawa, May 22, 1945.

J. A. CROSS.

I concur:

HUGH WARDROPE

FRANK MACPHERSON.

ORDER No. 66049

In the matter of the application of the Department of Public Works of the Province of Manitoba, hereinafter called the "Applicant", for an Order granting it leave to construct a highway across the railway of the Canadian National Railways on Third Street, Birch River Station, Manitoba, on the Southwest Quarter of Section 35, Township 39, Range 26, West, as shown on plan No. F 275 on file with the Board under file No. 43972.

WEDNESDAY, the 23rd day of May, A.D. 1945.

J. A. CROSS, K.C., *Chief Commissioner.*

HUGH WARDROPE, *Assistant Chief Commissioner.*

F. M. MACPHERSON, *Commissioner.*

Upon hearing the application at the sittings of the Board held at Winnipeg, Manitoba, on April 30, 1945, in the presence of Counsel for the Applicant and the Railway Company, and what was alleged—

It is ordered:

1. That the Applicant be, and it is hereby, granted leave to construct and maintain a public highway crossing over the tracks of the Canadian National Railways on Third Street, in the hamlet of Birch River, in the Province of Manitoba, on the Southwest Quarter of Section 35, Township 39, Range 26, West 1st Meridian, as shown on the said plan on file with the Board under file No. 43972: the said crossing to be constructed in accordance with the Standard Regulations of the Board Affecting Highway Crossings.

2. That the cost of constructing and maintaining the crossing hereby authorized, including the cost of removing the section house, and all costs of maintenance of the crossing be borne and paid by the Applicant.

J. A. CROSS,

Chief Commissioner.

1. *Consideration of the matter of the construction of additional protection at the crossing of the highway (Concession Street) by Canadian National Railways, being the first public crossing East of Casselman Station, in the Province of Ontario, Alexandria Subdivision, and the apportionment of the cost of construction and maintenance of such protection.*

File No. 9437.1157

2. *Consideration of the matter of the construction of additional protection at the crossing of the highway (Sealey Street) by the Canadian National Railways, being the second public crossing East of Casselman Station, in the Province of Ontario, Alexandria Subdivision, and the apportionment of the cost of construction and maintenance of such protection.*

File No. 26765.25

JUDGMENT

STONE, Commissioner:

Concession Street crosses the Canadian National Railways' single track main line at an angle of approximately 60 degrees, 450 feet east of Casselman Station, in the Province of Ontario. Sealey Street crosses the same line of railway at an angle of approximately 35 degrees, at a point 175 feet further east from Concession Street. These two streets meet a short distance north of the railway track, and are both under the jurisdiction of the Corporation of the Village of Casselman where they intersect the railway.

The present automatic protection installed at each crossing consists of a bell and illuminated danger sign. The one at Concession Street was authorized by Board's Order No. 23277, dated February 11, 1915, and the one at Sealey Street was authorized by Board's Order No. 26110, dated May 14, 1917. These signals function continually when trains occupy the main track within the ringing circuit, and almost continually during switching operations when performed in the vicinity of Casselman Station.

Rail traffic on the Alexandria Subdivision averages sixteen trains each day. Two passenger trains, and occasionally freight trains, do not stop at Casselman Station; the remainder are considered local trains, as they either stop at Casselman for passengers, or to fill up the engine tender with water from the water tank located there. Highway traffic over Sealey Street crossing is substantial, while similar traffic passing over Concession Street is approximately one-third of that recorded over Sealey Street within a similar period of time.

Since the erection of the present protection at Sealey Street, four different accidents, attended with minor injuries, have been reported to the Board, but in each case the accident could have been avoided if more care had been exercised by the users of the highway. The last accident occurred October 23, 1942, when an automobile travelling over Sealey Street crossing collided with an eastbound train, and resulted in slight injuries to the auto driver and slight damage to the automobile.

On December 28, 1944, a pedestrian was injured at Concession Street crossing by coming in contact with Second No. 47 train, and this case is the first accident recorded at this crossing since the present automatic protection was installed.

The Board's Inspector who investigated the accident which occurred at Sealey Street on October 23, 1942, and the recent one at Concession Street on December 28, 1944, reported that these accidents were the fault of those using the highways; also, that the automatic protection was operating properly at the time of the occurrences.

Following these reports, it was decided that the Engineering Department make a further check on the adequacy of the present automatic protection, with the result that recommendations were received to substitute flashing light signals and bells in lieu of the existing bells and danger signs.

Correspondence exchanged between the Board, the Municipality of the Village of Casselman, and the Railway, as to the adequacy of the present form of protection, costs for the proposed improvement in the ringing circuit, and substitution of a more up to date form of warning device, developed information from the Canadian National Railways that the estimated cost of bringing the circuits up to date for the existing automatic protection at both crossings would be \$1,562, and the substitution of flashing light signals at both crossings would mean an additional expense of \$3,638. Both improvements were estimated to cost \$5,200.

Difference of opinion originated between the parties affected as to distribution of costs for additional protection, and why the necessity at this time of the proposed improved protection. Consideration was given to the differences of opinion as to the distribution of costs that would be involved, etc., and the case was heard by the Board at Casselman on Wednesday, the 9th day of May, 1945.

At the hearing Mr. A. K. Dysart appeared for the Canadian National Railways; Mayor R. Boileau for the Village of Casselman; and Mr. R. Boismenu, Engineer, for the Counties of Russell and Prescott.

The parties agreed at the hearing to consider the protection and costs involved for the proposed improvements at both crossings as a joint matter.

The Corporation of the Village of Casselman, while favouring any improvements considered necessary in the present protection, emphasized quite strongly that the financial position of the Municipality made it impossible for them to contribute towards any improvements as now proposed, and claimed they were senior at both crossings; that any costs for protection considered necessary should be an obligation on the Railway and not on the Municipality; that the present protection was considered adequate for present traffic, but admitted the bells at both crossings frequently operated for periods of time when no train movements were being made over the crossings.

Mr. R. Boismenu, Engineer for the Counties of Russell and Prescott, explained that both crossings were within the jurisdiction of the Municipality of the Village of Casselman for maintenance purposes, and that the County has no responsibility for the upkeep of Sealey Street within the Village, but at Concession Street the County, under the Highway Improvement Act, authorized a 50 per cent rebate of maintenance costs. He stated that the heavy traffic is on Sealey Street, and considered the existing sign gives adequate and sufficient warning.

Counsel for the Railway examined witnesses who testified that the present protection was efficient, but admitted the crossing bells operated at times when no train movements were being made over either crossing. Counsel in argument stated that the Railway considered the installation of flashing lights at these crossings a little premature, but if the Board considered the ordering of a different form of protection then forty per cent (40%) of the cost of such changes should be paid out of the Grade Crossing Fund, and the Railway should not be required to bear the whole brunt of the balance; and that—

“Under these circumstances, where no one is pressing for a change in the existing protection, where it is quite evident from the testimony given here today that the danger has not increased in the last few years, we submit there should be no change in the existing protection.”

Following the hearing, the Board personally examined both crossings and noticed that the bells were ringing frequently on account of switching movements underway at the other end of Casselman Station Yard, and that during that period of time no train passed over the crossing.

The Railway and the Municipalities concerned being in accord that the present protection at Sealey Street and Concession Street crossings is efficient, and adequate to warn highway traffic against train movements, I would not now

authorize substitution of the present bell and illuminated sign by the proposed flashing light signals.

Regarding the continual ringing of these crossing bells at times when no train passes over the crossings, I am of the opinion this condition should be remedied. Any warning device which is permitted to give false indication is a danger to those using the highways, as the continued repetition of false warnings develops a disregard for the indication shown.

Order No. 23277, dated February 11, 1915, governing the installation of protection at Concession Street, and Order No. 26110, dated May 14, 1917, governing the installation of protection at Sealey Street, provided, with regard to the maintenance costs of both signals, that the Railway "thereafter maintain the said bell at its own expense."

Under the provision of this feature of these Orders the Railway should, in my opinion, have maintained the circuits so that the false warnings would not be displayed to highway traffic.

I would direct the Canadian National Railways to rearrange the present operating circuits to minimize the unnecessary operation of the protection, and to provide proper operation of the protection for train meets at their own expense. A detailed plan of the proposed changes to be submitted for the approval of the Board.

Order to go accordingly.

May 24, 1945.

G. A. STONE.

I concur,

J. A. CROSS.

HUGH WARDROPE.

ORDER No. 66057

In the matter of the consideration of the question of the installation of additional protection at the crossings of Concession and Sealey streets by the Canadian National Railways, being the first and second public crossings, respectively, east of Casselman Station, in the Province of Ontario, on the Alexandria Subdivision; and the apportionment of the cost of installation and maintenance of such protection.

File No. 9437.1157

26765.25

FRIDAY, the 25th day of May, A.D. 1945.

J. A. CROSS, K.C., *Chief Commissioner.*

HUGH WARDROPE, *Assistant Chief Commissioner.*

G. A. STONE, *Commissioner.*

Upon hearing the matter at the sittings of the Board held at Casselman on May 9, 1945, in the presence of Counsel for and representatives of the Canadian National Railways, the Village of Casselman, and the Counties of Russell and Prescott, and what was alleged—

It is ordered: That the Canadian National Railways rearrange the present operating circuits at the crossings of Concession and Sealey streets, in the Village of Casselman, in the Province of Ontario, so as to minimize the unnecessary operation of the automatic bell at the said crossings, and provide proper operation of the protection for train meets, at their own expense: a detail plan showing the changes hereby ordered to be submitted for the approval of an Engineer of the Board.

J. A. CROSS,

Chief Commissioner.

ACCIDENTS REPORTED TO THE OPERATING DEPARTMENT BOARD OF TRANSPORT COMMISSIONERS FOR CANADA, APRIL, 1945

Railway Accidents	166 with 16 killed and 220 injured	
Level Crossing Accidents	31 with 9 killed and 78 injured	
	Killed	Injured
Passengers	—	15
Employees	5	146
Others	20	137
Totals	25	298

DETAILS OF ACCIDENTS AT HIGHWAY CROSSINGS

Accidents	K.	I.	NEW BRUNSWICK
1	—	2	Auto truck ran into side of train. Licence not given.
1	—	1	Automobile drove onto crossing in front of approaching train and was struck. Licence, N.B. 14-505.
QUEBEC			
1	—	5	Automobile drove onto crossing in front of approaching train and was struck. Licence, Que. 164527.
1	—	22	Auto bus drove onto crossing in front of approaching train and was struck. Licence not given.
1	3	5	Automobile drove onto crossing in front of approaching train and was struck. Licence, Que. 129-425.
1	—	1	Automobile drove onto crossing in front of approaching train and was struck. Licence, Que. 111-610.
1	—	2	Automobile drove onto crossing in front of approaching train and was struck. Licence, Que. 64741.
1	1	1	Auto truck drove onto crossing in front of approaching train and was struck. Licence not given.
ONTARIO			
1	1	—	Auto truck drove onto crossing in front of approaching train and was struck. Licence, Ont. 240-28-C.
1	—	1	Automobile drove onto crossing in front of approaching train and was struck. Licence, Ont. 24-P-73.
1	—	2	Auto truck drove onto crossing in front of approaching train and was struck. Licence, Ont. 41833-C.
1	—	7	Automobile drove onto crossing in front of approaching train and was struck. Licence, Ont. 545-T-2.
1	—	1	Auto truck drove onto crossing in front of approaching train and was struck. Licence, Ont. 69152-C.
1	3	3	Automobile drove onto crossing in front of approaching train and was struck. Licence, Ont. 3-N-910.
1	—	1	Automobile drove onto crossing in front of approaching train and was struck. Licence, Ont. 6-N-901.
1	—	1	Automobile drove onto crossing in front of approaching train and was struck. Licence, Ont. 313-K-3.
1	—	1	Horse-drawn vehicle drove onto crossing in front of approaching train and was struck.
1	—	1	Automobile drove onto crossing in front of approaching train and was struck. Licence, Ont. 8-M-865.
1	—	3	Automobile ran into side of train. Licence Ont. 175-J-1.
1	—	1	Auto truck drove onto crossing in front of approaching train and was struck. Licence, Ont. 55980-C.
1	—	1	Automobile drove onto crossing in front of approaching train and was struck. Licence, Ont. 861-E-1.
1	—	1	Automobile drove onto crossing in front of approaching train and was struck. Licence, Ont. 4-S-323.
1	—	2	Automobile drove onto crossing in front of approaching train and was struck. Licence, Ont. 238-E-8.

Accidents K. I.

MANITOBA

1	—	1	Child three years old playing on track struck by train.
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SASKATCHEWAN

1	1	2	Automobile drove onto crossing in front of approaching train and was struck. Licence, Sask. 64906.
1	—	2	Auto truck drove onto crossing in front of approaching train and was struck. Licence, Man. 21842.
1	—	1	Track motor car struck automobile. Licence, Sask. 94-769.

ALBERTA

1	—	1	Automobile drove onto crossing in front of approaching train and was struck. Licence, Alta. 50658.
1	—	1	Auto truck drove onto crossing in front of approaching train and was struck. Licence, Alta. CV-8884.
1	—	4	Auto truck struck track motor car. Licence not given.

BRITISH COLUMBIA

1	—	1	Automobile drove onto crossing in front of approaching train and was struck. Licence, B.C.34-682.
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Of the 31 accidents at highway crossings, 26 occurred at unprotected crossings and 5 at protected crossings. Eighteen of the accidents occurred after sunrise and thirteen after sunset.

May 30th, 1945.

SUMMARY OF ORDERS ISSUED BY THE BOARD

- 66012 May 15—Authorizing C.N.R. to operate their passenger trains over crossing with C.P.R. near St. Cloud, Ont., mileage 98.6 Sudbury Subd.
- 66013 May 17—Declaring Oshawa Railway crossing of King Street and Ritson Road, Oshawa, Ont. protected to Board's satisfaction. Present speed limitation of ten miles an hour to be maintained.
- 66014 May 17—Approving location of pipe lines, etc., of Imperial Oil Limited near C.N.R. tracks at Downsview, Ont.
- 66015 May 17—Approving location of pipe lines, etc., of Imperial Oil Limited near C.P.R. tracks at McMahon, Sask.
- 66016 May 17—Approving location of pipe lines, etc., of Imperial Oil Limited near tracks of C.P.R. at Sedgewick, Alta.
- 66017 May 17—Approving location of storage tank of Imperial Oil Limited near tracks of C.P.R. at Loughheed, Alta.
- 66018 May 17—Approving location of storage tank of Imperial Oil Limited near tracks of C.P.R. at Strome, Alta.
- 66019 May 17—Approving clearances of platform at plant of the Canadian Cellucotton Products Company, Limited, at Niagara Falls, Ont. (N.Y.C. R.R.)
- 66020 May 11—Approving location of pipe lines, etc., of McColl-Frontenac Oil Co. Ltd. near C.N.R. tracks at Truro, N.S.
- 66021 May 16—Authorizing C.N.R. and New York Central Railroad to make certain changes at the crossing of their railways at Amigari and Niagara Junction, Ont.
- 66022 May 17—Amending Order No. 65980 dated May 5th, 1945, re location of storage tanks, etc. of Grandview Co-Op. Oil & Supplies Ltd. at Grandview, Man. (C.N. Rys.)
- 66023 May 18—Declaring C.P.R. crossing of 8th Street East first level crossing east of station at Calgary, Alta., protected to Board's satisfaction; present speed limitation of ten miles per hour to be maintained.
- 66024 May 18—Approving location of storage tank of Imperial Oil Ltd. near C.P.R. tracks at Stettler, Alta.
- 66025 May 18—Authorizing C.N.R. to remove station building at Sockeye, B.C., mileage 102.5 Skeena Subd.
- 66026 May 18—Authorizing Esquimalt & Nanaimo Railway Co. to use and operate bridge over highway at mileage 79.12 Victoria Subd., Vancouver Island, B.C.
- 66027 May 18—Declaring C.P.R. crossing of highway first west of Louiseville Station, Que., protected to Board's satisfaction.
- 66028 May 18—Approving under Maritime Freight Rates Act tolls published in tariffs filed by Canadian Freight Association under Secs. 3 and 9.
- 66029 May 19—Approving location of pipe lines, etc., of Imperial Oil Ltd., near C.P.R. tracks at Killam, Alta.
- 66030 May 19—Approving under Maritime Freight Rates Act tolls published in tariffs filed by C.N.R. under Sec. 3.
- 66031 May 19—Declaring C.P.R. crossing of highway at mileage 31.1 Peterboro Subd., Ont. protected to Board's satisfaction.
- 66032 May 21—Amending Order No. 65970, dated May 3, 1945, re C.N.Rys. crossing at mileage 17.2 Sussex Subd., N.B.
- 66033 May 21—Authorizing C.N.R. to install automatic flashing light signals and bell at crossing east of St. Pascal Station, Quebec, mileage 25.22 Montmagny Subd.
- 66034 May 21—Declaring C.P.R. crossing of Madoc Road, first east of Ivanhoe, Ont. protected to Board's satisfaction.
- 66035 May 21—Rescinding Order No. 63893, dated August 19, 1943, requiring protection by watchman at crossing of South Main Street, Town of Sutton, Que. (C.P.R.)
- 66036 May 21—Declaring the operation of light engines by the C.P.R. Co. from Revelstoke to Glacier, B.C., without a conductor a violation of the terms of Board's General Order No. 236.
- 66037 May 21—Authorizing C.P.R. to reconstruct Bridge No. 113.93 Nelson Subd., B.C.
- 66038 May 21—Authorizing C.P.R. to reconstruct Bridge No. 110.25 Nelson Subd., B.C.

- 66039 May 21—Approving under Maritime Freight Rates Act tolls published in tariffs filed by Dominion Atlantic Railway Co. under Sec. 9.
- 66040 May 21—Declaring Grand River Railway crossing of Hespeler Road in the City of Galt, Ont. protected to Board's satisfaction; present speed limitation of ten miles an hour to be maintained.
- 66041 May 21—Authorizing C.N.R. to reconstruct the bridge over Rosebud River, mileage 65.7 Drumbheller Subd., Alta.
- 66042 May 21—Declaring C.N.R. crossing of King Street, second east of east switch at Emo, Ont. protected to Board's satisfaction.
- 66043 May 21—Declaring Grand River Railway crossing of highway north of Hagey Shelter, Ont. protected to Board's satisfaction.
- 66044 May 21—Extending time within which C.N.R. were required to install protection at crossing of their Lakehead Division over Arthur Street, Fort William, Ont.
- 66045 May 21—Approving location and details of C.N.Rys. shelter to be erected at Canfield, Ont.
- 66046 May 22—Approving British Columbia Telephone Company's revised sheets of Tariff C.T.C. No. 25.
- 66047 May 21—Extending time within which C.N.R. were required to install protection at tracks at their crossing of 93rd Street, Edmonton, Alta.
- 66048 May 23—Authorizing C.P.R. to construct branch line of railway to serve United Fishermen's Co-operative Society at Vancouver, British Columbia, mileage 126.84 on the C.N.Rys.' Cascade Subd.
- 66049 May 23—Authorizing Dept. of Public Works of the Province of Manitoba to construct public highway crossing over tracks of C.N.R. at Third Street, hamlet of Birch River, Man.
- 66050 May 23—Approving clearances at trackage serving Noranda Mines Limited at Noranda, Que. (Nipissing Central Ry.).
- 66051 May 23—Authorizing C.P.R. to construct passing track across road allowance between Sections 33 and 28, Twp. 20, Rge. 29, W.P.M., at Harrowby, Man.
- 66052 May 23—Declaring C.N.R. crossing of highway first west of Hanna, Alta., protected to Board's satisfaction.
- 66053 May 23—Approving clearances of rain shelter over track "B-13" serving the Winnipeg Electric Company's gas plant on Sutherland Ave., Winnipeg, Man. (C.P.R.).
- 66054 May 23—Authorizing Dept. of Public Works for the Province of Alberta to construct highway crossing over C.P.R. at mileage 45.19 Coutts Subd., Alta.
- 66055 May 24—Authorizing C.N.R. to reconstruct overhead highway bridge at mileage 69.7 La Tuque Subd., Que.
- 66056 May 24—Amending Order No. 65977, dated May 3, 1945, re flashing light signals and bells at Talbot Street Crossing, Essex, Ont. (N.Y.C. R.R.).
- 66057 May 25—Authorizing C.N.R. to rearrange present operating circuits at crossings of Concession and Sealey Streets, Village of Casselman, Ont.
- 66058 May 24—Approving location of C.P.R. Co.'s new station at Whitefish Falls, Ont.
- 66059 May 24—Authorizing C.P.R. to use and operate bridge No. 0.9 over Henderson's Creek, on its Eganville Subd., Ont.
- 66060 May 24—Authorizing C.P.R. to use and operate bridge No. 10.1 over the Bonnechere River near Douglas, Ont., on its Eganville Subd., Ont.
- 66061 May 24—Authorizing C.P.R. to use and operate bridge No. 4.9 over Hines Creek, on its Eganville Subd., Ont.
- 66062 May 25—Authorizing C.P.R. to operate its trains through interlocking plant at its crossing with tracks of the Sudbury-Copper Cliff Suburban Electric Railway Co. Ltd. at Elm St., Sudbury, Ont.
- 66063 May 26—Approving under Maritime Freight Rates Act tolls published in tariffs filed by C.N.R. under Sec. 3.
- 66064 May 24—Approving location and details of C.N.Rys.' station near St. Hubert Street, Montreal, Que.
- 66065 May 28—Authorizing C.P.R. to construct branch line of railway to serve the Kalamazoo Vegetable Parchment Co. at mileage 1.54 Little Current Subd., Dist. of Sudbury, Ont.
- 66066 May 26—Declaring C.N.R. crossing of highway being second public road crossing north of Tara Station, Ont. protected to Board's satisfaction.
- 66067 May 29—Authorizing C.N.R. to construct proposed spur track to serve Grande Prairie Grain Co. Ltd. across lane parallel to their right of way between 75th Street and 120th Avenue, in the City of Edmonton, Alta.

- 66068 May 29—Authorizing C.N.R. to operate their passenger trains over interlocking plant at crossing of New York Central Railroad at Appin, Ont.
- 66069 May 29—Authorizing C.P.R. to construct two branch lines of railway to serve the Western Plywood Company, Limited, at Vancouver, B.C.
- 66070 May 30—Approving under Maritime Freight Rates Act tolls published in tariffs filed by C.N.R. under Sec. 3.
- 66071 May 30—Approving under Maritime Freight Rates Act tolls published in tariffs filed by the Canadian Freight Association under Secs. 3 and 9.
- 66072 May 30—Declaring C.N.R. crossing of Mercier Street, Town of St. Johns, Que., protected to Board's satisfaction; present speed limitation of ten miles per hour to be maintained.
- 66073 May 30—Authorizing C.N.R. to use and operate bridges on their Saanich Spur, Vancouver Island, B.C. Mileages 0·6, 0·7 and 0·9.

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The Board of Transport Commissioners for Canada

Judgments, Orders, Regulations and Rulings

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No. 7

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ORDER No. 66083

In the matter of the application of the Canadian National Railway Company, under Sections 323 and 360 of the Railway Act, for approval of By-law No. 20, adopted by the Directors on May 25, 1945, amending By-law No. 4 relating to the preparation and issue of express tariffs of tolls by deletion therefrom of the words, "and the Traffic Manager", and the substitution therefor of the words, "the General Superintendent of Traffic and Transportation and the Superintendent of Traffic":

File No. 4277.1

FRIDAY, the 1st day of June, A.D. 1945.

J. A. CROSS, K.C., *Chief Commissioner.*

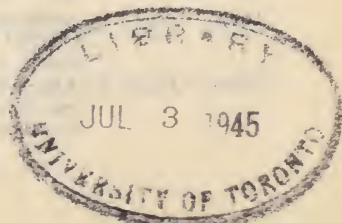
HUGH WARDROPE, *Assistant Chief Commissioner.*

G. A. STONE, *Commissioner.*

Upon the recommendation of the Assistant Director, Traffic Department of the Board—

It is ordered: That the said By-law No. 20, on file with the Board under file No. 4277.1, be, and it is hereby, approved.

J. A. CROSS,
Chief Commissioner.



GENERAL ORDER No. 672

In the matter of the General Order of the Board No. 671, dated April 18, 1945, amending the Regulations for the Transportation by Express of Acids, Inflammables, Oxidizing Substances, Samples of Explosives, etc., by permitting the shipment of samples of cordite (only) from Winnipeg, Manitoba, to Quebec and Valcartier, Quebec:

File No. 1717.12.3

SATURDAY, the 2nd day of June, A.D. 1945.

J. A. CROSS, K.C., *Chief Commissioner.*

HUGH WARDROPE, *Assistant Chief Commissioner.*

J. A. STONEMAN, *Commissioner.*

G. A. STONE, *Commissioner.*

F. M. MACPHERSON, *Commissioner.*

Upon reading the submissions filed on behalf of The Express Traffic Association of Canada; and upon the recommendation of the Director of Operation of the Board—

It is ordered: That the said General Order No. 671, dated April 18, 1945, be, and it is hereby, rescinded.

J. A. CROSS,
Chief Commissioner.

SUMMARY OF ORDERS ISSUED BY THE BOARD

- 66074. May 30—Authorizing C.P.R. to construct branch lines of railway to serve the Reid Milling Company at mileage 20.02 Galt Subd., Twp. of Toronto, County of Peel, Ont.
- 66075. May 30—Authorizing C.N.R. to use and operate bridges on their Cowichan Subd., Vancouver Island, B.C. at certain mileages.
- 66076. May 30—Authorizing C.N.R. to operate bridges on their Tidewater Subd., Vancouver Island, B.C., at certain mileages.
- 66077. May 30—Declaring C.N.R. crossing of Victoria Avenue, first public crossing east of station at Rosburn, Man. protected to Board's satisfaction.
- 66078. May 30—Declaring Quebec Central Railway crossing of Foundry Road second north of St. Anselme Station, Que. protected to Board's satisfaction.
- 66079. May 30—Declaring C.P.R. crossing of Colborne Street, Chatham, Ont. protected to Board's satisfaction; present speed limitation of ten miles per hour to be maintained.
- 66080. May 30—Amending Order No. 64042, dated October 2, 1943, *re* crossing of Angus Street, East Angus, Que. (Quebec Central Ry.).
- 66081. May 31—Declaring C.P.R. crossing of highway second north of Vernon Station, B.C. protected to Board's satisfaction; present speed limitation of ten miles an hour to be maintained and rescinding Order No. 66002, dated May 11, 1945.
- 66082. June 1—Authorizing C.P.R. to construct branch line of railway to serve Western Gypsum Products Limited in the City of Calgary, Alta.
- 66083. June 1—Approving By-law No. 20 of the C.N.Rys, *re* issue of tariffs of tolls.
- 66084. June 1—Approving location of twelve pipes of Imperial Oil Limited under tracks of Pere Marquette Railway Company at Sarnia, Ont.
- 66085. June 1—Amending Order No. 65710, dated February 2, 1945, authorizing New York Central Railroad to install flashing light signals at crossing of Stanley Street, St. Thomas, Ont.
- 66086. June 1—Approving plan No. G-337, revised to May 14, 1945, showing protection installed at crossing of Metcalfe Street by New York Central Railroad, at St. Thomas, Ont.

- 66087. June 2—Approving under Maritime Freight Rates Act tolls published in tariffs filed by C.P.R. under Sec. 9.
- 66088. June 1—Approving clearances of overhead monorail crane located on C.P.R. spur serving McLennan, McFeely & Prior Ltd. at Vancouver, British Columbia.
- 66089. June 1—Amending Order No. 65704, dated February 2, 1945, authorizing New York Central Railroad to install protection at crossing of Church Street, St. Thomas, Ont.
- 66090. June 2—Authorizing C.P.R. to reconstruct Bridge No. 10.71 White Fox Subd. over White Fox River, Saskatchewan.
- 66091. June 2—Authorizing Dept. of Public Works for B.C. to construct highway crossing over tracks of C.P.R. at Mile 63.2 Cranbrook Subd., B.C.
- 66092. June 2—Approving plan No. G-334, revised to May 21, 1945, showing protection to be installed at crossing of White Street by the New York Central Railroad at St. Thomas, Ont.
- 66093. June 4—Approving plan No. G-336, revised to May 21, 1945, showing protection to be installed at crossing of Queen Street by the New York Central Railroad at St. Thomas, Ont.
- 66094. June 4—Authorizing C.N.R. to construct spur to serve Imperial Tobacco Co. of Canada across Beech Street, Town Aylmer, Ont.
- 66095. June 4—Declaring C.P.R. crossing of highway first west of station at Castor, Alta. protected to Board's satisfaction.
- 66096. June 4—Approving plan No. G-335, revised to May 21, 1945, showing protection to be installed at crossing of William Street by the New York Central Railroad at St. Thomas, Ont.
- 66097. June 4—Authorizing C.P.R. to install two flashing lights and bell at its crossing of No. 80 Highway just west of Glencoe Station, Ont.
- 66098. June 5—Approving under Maritime Freight Rates Act tolls published in tariffs filed by Canadian Freight Association under Sec. 9.
- 66099. June 4—Declaring Quebec Central Railway crossing of Massiwiippi Street second south of Lennoxville Station, Que. protected to Board's satisfaction.
- 66100. June 5—Authorizing C.P.R. to use and operate Bridge No. 19.46 Maniwaki Subd., over La Peche River, at Wakefield, Que.
- 66101. June 5—Authorizing C.N.Rys to construct spur to serve Thompson-Hayland Lumber Ltd. along and across Syples Street, Village of Burk's Falls, Ont.
- 66102. June 5—Authorizing Toronto, Hamilton and Buffalo Railway Co. to reconstruct highway bridge carrying the line of Chatham St. in the City of Hamilton, Ont.
- 66103. June 5—Authorizing C.P.R. to construct spur across Fairview Road at Penticton, B.C.
- 66104. June 5—Authorizing that cost of maintenance of automatic protection required to be installed at crossing of Lansdowne Street, City of Peterboro, Ont. be divided equally between the C.P.R. and the City of Peterboro.
- 66105. June 6—Approving under Maritime Freight Rates Act tolls published in tariffs filed by C.N.R. under Sec. 3.
- 66106. June 6—Extending time within which C.P.R. was required to install protection at crossing of Brassard Street, Magog, Que.
- 66107. June 6—Approving relocation of pipe lines, etc., of McColl-Frontenac Oil Co. Limited near C.P.R. tracks at Whitewood, Sask.
- 66108. June 6—Approving clearances at sidings serving the Canada Cement Company, Ltd. at Lakefield, Ont.
- 66109. June 7—Approving clearances at the ramp on C.N.Rys. siding serving Bonter Brothers at Kinsmans, Ont., on the Maynooth Subd.
- 66110. June 6—Declaring C.N.R. crossing of highway second west of Edgington Station, Ont. protected to Board's satisfaction.
- 66111. June 6—Approving relocation of pipe lines, etc., of Imperial Oil Limited near C.P.R. tracks at Milk River, Alta.
- 66112. June 6—Authorizing C.P.R. to construct branch line of railway to serve Canadian Resins & Chemicals Ltd. at mileage 21.44 St. Maurice Valley Subd., City of Shawinigan Falls, Que.
- 66113. June 7—Declaring C.N.R. crossing of highway first just west of St. Cyrille Station, Station, Que. protected to Board's satisfaction.
- 66114. June 6—Approving relocation of existing plant of Imperial Oil Limited near C.P.R. tracks at Taber, Alta.

- 66115. June 6—Declaring C.N.R. crossing of highway at mileage 48.88 Midland Sub-division, Ont. protected to Board's satisfaction.
- 66116. June 6—Approving location of pipe lines, etc., of North Star Oil Limited near C.N.R. tracks at Whitecourt, Alta.
- 66117. June 6—Authorizing C.P.R. to construct extension to branch line of railway to serve Canadian Forest Products Limited (Eburne Saw Mills Division) at Marpole, B.C.
- 66118. June 8—Authorizing C.N.R. to use and operate overhead crossings on the Eastern Junction, Bout de l'Île line at certain mileages.
- 66119. June 8—Authorizing C.N.R. to open for carriage of traffic their line of railway between Eastern Junction and Bout de l'Île on the Island of Montreal, Que.
- 66120. June 9—Authorizing C.P.R. to construct branch line of railway to serve Burgess Tools Limited at Mileage 0.78 Carleton Place Subd., County of Carleton, Ont.
- 66121. June 9—Authorizing C.N.R. to remove station building at Beaubien, in the County of l'Islet, Que.
- 66122. June 9—Approving under Maritime Freight Rates Act tolls published in tariffs filed by C.N.R. under Sec. 3.
- 66123. June 9—Approving under Maritime Freight Rates Act tolls published in tariffs filed by C.P.R. under Sec. 9.
- 66124. June 9—Declaring C.P.R. crossing of highway first east of Springside Station, Sask. protected to Board's satisfaction.
- 66125. June 9—Declaring C.N.R. crossing of highway two poles north of Scapa mileboard, Alta. protected to Board's satisfaction.
- 66126. June 11—Authorizing John A. Stoneman in the absence of the Chief Commissioner, Asst. Chief Commissioner and Deputy Chief Commissioner to sign regulations, orders and other documents.
- 66127. June 9—Approving location of pipe lines, etc., of Imperial Oil Limited near the C.P.R. tracks at Halkirk, Alta.
- 66128. June 11—Declaring C.N.R. crossing of West Colborne Street in the City of Brantford, Ont. protected to Board's satisfaction; present speed limitation of ten miles an hour to be maintained and all switching movements be flagged by a member of the crew.
- 66129. June 9—Declaring C.N.R. crossing of Albert Street in the Town of Lindsay, Ont. protected to Board's satisfaction; present speed limitation of ten miles an hour to be maintained.
- 66130. June 11—Authorizing C.P.R. to construct two cross-over tracks to serve The International Nickel Company of Canada, Ltd., Twp. of McKim, Dist. of Sudbury, Ont.
- 66131. June 12—Authorizing C.P.R. to construct branch line of railway to serve the Beban Logging Company, Limited, Newcastle Dist., Vancouver Island, B.C.
- 66132. June 12—Declaring C.N.R. crossing of Fifth Avenue immediately north of Lift Bridge, north bank of Lachine Canal, Town of Ville St. Pierre, Que. protected to Board's satisfaction; present speed limitation of ten miles per hour to be maintained and all movements over said crossing to be protected by a member of the crew.
- 66133. June 9—Approving relocation of pipe lines, etc., of McColl-Frontenac Oil Co. Ltd. near C.N.R. tracks at Halifax, N.S.
- 66134. June 13—Authorizing C.P.R. to construct branch line of railway to serve La Societe Co-operative Agricole in the Village of Thurso, Twp. of Lochaber, Que.

The Board of Transport Commissioners for Canada

Judgments, Orders, Regulations and Rulings

Vol. XXXV

Ottawa, July 15, 1945

No. 8

This publication is issued fortnightly, on the 1st and 15th of each month. Annual subscription, \$3.00; single numbers, 20 cents; in quantities, 25 per cent discount. Remittances should be made to the King's Printer, Ottawa, by postal money order, express order or accepted cheque. The use of currency for this purpose is contrary to the advice of the postal authorities and entails a measure of risk. Postage stamps, foreign money or uncertified cheques will not be accepted. No extra charge is made for postage on documents forwarded to points in Canada and in the United States, but cost of postage is added to the selling price when documents are mailed to other countries. Early application should be made for copies in quantities. Subscriptions should be sent, in every case, to the King's Printer, Ottawa.

CIRCULAR No. 262R

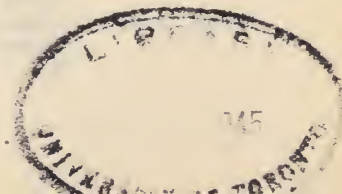
OTTAWA, June 22, 1945.

File No. 28638.2.485: Board's General Orders Nos. 441, 530, 594, 597 and 602 relating to the handling and storage of inflammable liquids and petroleum gases on and adjacent to railway property.

In view of the issuance of Order No. 003-D of the Department of Munitions and Supply, Office of the Oil Controller, whereby sections 3, 4, 5, 6 and 8 of Order No. 003 were rescinded, you are advised that Board's Circulars Nos. 248R, 253R and 261R are rescinded, and that on submissions of applications to the Board for approval of installations, it is no longer necessary to furnish the Board with any permit or authority of the Oil Controller.

By Order of the Board,

P. F. BAILLARGEON,
Secretary.



SUMMARY OF ORDERS ISSUED BY THE BOARD

- 66135. June 13—Authorizing C.N.R. to operate over subway on extension of 18th Street, City of Quebec, P.Q.
- 66136. June 13—Declaring C.N.R. crossing of St. Phillips Street third west of Bridgewater Station, N.S. protected to Board's satisfaction; present speed limitation of ten miles per hour to be maintained.
- 66137. June 13—Declaring C.N.R. crossing of Highbury Avenue in the City of London, Ont. protected to Board's satisfaction.
- 66138. June 14—Extending time within which C.P.R. was required to construct branch line of railway to serve W. H. Norman at mileage 101.34 Kingston Subd., Ont.
- 66139. June 14—Amending Order No. 65785 *re* C.N.R. bridge over Ste. Anne River, Parish of St. Raymond, P.Q.
- 66140. June 15—Approving location of pipe lines, etc., of Imperial Oil Ltd. near C.P.R. tracks at Hayter, Alta.
- 66141. June 15—Authorizing C.P.R. to construct connecting track to form south leg of wye at mileage 63.0 Victoria Subd., Vancouver Island, B.C.
- 66142. June 15—Authorizing C.P.R. to construct branch line of railway to serve the Western Match Company Limited at Esquimalt, B.C.
- 66143. June 15—Declaring C.N.R. crossing of King Street third north of Alliston Station, Ont. protected to Board's satisfaction; present speed limitation of ten miles per hour to be maintained.
- 66144. June 15—Approving location of pipe lines, etc., of Imperial Oil Ltd. near C.P.R. tracks at Hardisty, Alta.
- 66145. June 15—Authorizing C.N.R. to carry out changes to interlocking plant at east end of C.P.-C.N. joint section, Current Junction, Port Arthur, Ont.
- 66146. June 15—Declaring C.N.R. crossing of Selby Road first west of Napanee Station, Ont. protected to Board's satisfaction; no cars to be left standing on shed track and all switching movements protected by member of the crew.
- 66147. June 15—Declaring C.P.R. crossing of St. John Street first north of Queen Street intersection, Saint John, N.B., protected to Board's satisfaction; present speed limitation of five miles per hour to be maintained.
- 66148. June 15—Declaring C.P.R. crossing of highway first east of station at Whitemouth, Man. protected to Board's satisfaction.
- 66149. June 15—Approving clearances at coaling plant at mileage 102.3 Belleville Subd., Trenton, Ont. (C.P.R.)
- 66150. June 15—Authorizing Municipality of Grenville and Augmentation to construct highway crossing over C.P.R. tracks at mileage 65.65 Lachute Subd., Que.
- 66151. June 16—Declaring C.N.R. crossing of St. Hilaire Road first east of Baker Brook Junction Tower, N.B. protected to Board's satisfaction.
- 66152. June 16—Approving location of pipe lines, etc., of Imperial Oil Ltd. near C.N.R. tracks at Galahad, Alta.
- 66153. June 16—Approving location of pipe lines, etc., of McColl-Frontenac Oil Co. Ltd. near C.P.R. tracks at Cardston, Alta.
- 66154. June 18—Approving location of pipe lines, etc., of Imperial Oil Ltd. near C.N.R. tracks at Radway, Alta.
- 66155. June 18—Approving location of pipe lines, etc., of Imperial Oil Ltd. near C.N.R. tracks at Elnora, Alta.
- 66156. June 18—Approving location of pipe lines, etc., of Imperial Oil Ltd. near C.N.R. tracks at Redwater, Alta.
- 66157. June 18—Approving under Maritime Freight Rates Act tolls published in tariffs filed by Dominion Atlantic Railway Co. under Sec. 9.
- 66158. June 18—Authorizing C.N.R. to operate over bridge across Beattie River, mileage 16.63 Durham Subd., Ont.
- 66159. June 16—Approving location of pipe lines, etc., of Imperial Oil Ltd. near C.P.R. tracks at Olds, Alta.
- 66160. June 18—Authorizing C.P.R. to construct branch line of railway to serve the Consolidated Mining & Smelting Company of Canada Limited at Warfield, B.C.

- 66161. June 18—Declaring C.P.R. crossing of Provincial Highway No. 27 about one mile north of Midhurst, Ont. protected to Board's satisfaction.
- 66162. June 18—Approving pipe lines, etc., of Imperial Oil Ltd. near C.P.R. tracks at Acme, Alta.
- 66163. June 19—Approving under Maritime Freight Rates Act tolls published in tariffs filed by C.N.R. under Sec. 3.
- 66164. June 20—Authorizing C.P.R. to construct branch line of railway to serve the Alberta Canning Company at Magrath, Alta.
- 66165. June 20—Authorizing New York Central Railroad Co. to install protection at crossing of Angle Road, three-quarters of a mile west of Ruscomb, Ont.
- 66166. June 19—Declaring C.N.R. crossing of Provincial Highway No. 10 first west of Chipman Station, N.B. protected to Board's satisfaction.
- 66167. June 21—Approving location of pipe lines, etc., of Imperial Oil Ltd. near C.P.R. tracks at Blackie, Alta.
- 66168. June 21—Approving location of pipe lines, etc., of Imperial Oil Ltd. near C.N.R. at Summerside, P.E.I.
- 66169. June 21—Approving location of pipe lines, etc., of Imperial Oil Ltd. near C.N.R. tracks at Burns Lake, B.C.
- 66170. June 21—Declaring C.P.R. crossing of St. Andre Street just north of Farnham Station, Que. protected to Board's satisfaction.
- 66171. June 22—Declaring C.N.R. crossing of Marien Avenue first east of Dube Street, Montreal East, Que. protected to Board's satisfaction; present speed limitation of ten miles per hour to be maintained.
- 66172. June 22—Approving location and details of C.N.R.'s new station building at Welby, Sask.
- 66173. June 22—Approving under Maritime Freight Rates Act tolls published in tariffs filed by C.P.R. under Sec. 9.
- 66174. June 22—Authorizing C.N.R. to use and operate bridge across C.P.R. at mileage 103.7 Ashcroft Subd., near Lytton, B.C.
- 66175. June 22—Authorizing C.N.R. to reconstruct bridge at mileage 73.8 Yale Subd., B.C.
- 66176. June 22—Authorizing C.N.R. to reconstruct timber trestle at mileage 73.6 Yale Subd., B.C.
- 66177. June 25—Approving under Maritime Freight Rates Act tolls published in tariffs filed by C.N.R. under Sec. 3.
- 66178. June 25—Authorizing C.P.R. to construct a branch line of railway to serve International Waxes Ltd. in Lot 26, Con. 2, Twp. of Scarboro, County of York, Ont.
- 66179. June 26—Declaring C.N.R. crossing of Thomas Street first south of Bracebridge Station, Ont. protected to Board's satisfaction.
- 66180. June 26—Rescinding Order No. 40866 and authorizing Northern Alberta Railways Co. to close highway crossing in NE $\frac{1}{4}$ Sec. 36, Twp. 63, Rge. 1, W5M., Alta.
- 66181. June 26—Approving relocation of pipe lines, etc., of McColl-Frontenac Oil Co. Ltd. near C.N.R. tracks at Charlottetown, P.E.I.
- 66182. June 26—Authorizing C.N.R. to install two flashing light signals and one bell at crossing of St. Albert Trail, Edmonton, Alta.
- 66183. June 26—Declaring C.N.R. crossing of William Street, Brockville, Ont. protected to Board's satisfaction; no movements to be made by locomotives on shop tracks over crossing unless protected by flagman.
- 66184. June 26—Authorizing C.N.R. to construct double track trestle over Descente Deslauriers Watercourse at St. Basile le Grand, County of Chambly, Que.

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The Board of Transport Commissioners for Canada

Judgments, Orders, Regulations and Rulings

Vol. XXXV

Ottawa, August 1, 1945

No. 9

This publication is issued fortnightly, on the 1st and 15th of each month. Annual subscription, \$3.00; single numbers, 20 cents; in quantities, 25 per cent discount. Remittances should be made to the King's Printer, Ottawa, by postal money order, express order or accepted cheque. The use of currency for this purpose is contrary to the advice of the postal authorities and entails a measure of risk. Postage stamps, foreign money or uncertified cheques will not be accepted. No extra charge is made for postage on documents forwarded to points in Canada and in the United States, but cost of postage is added to the selling price when documents are mailed to other countries. Early application should be made for copies in quantities. Subscriptions should be sent, in every case, to the King's Printer, Ottawa.

ORDER No. 66204

In the matter of the Order of the Board No. 63316, dated March 2, 1943, fixing agreed charges for the transport by rail carriers of eggs, less than car-loads, for Mid-West Produce Co. Ltd.

File No. 40994.2

THURSDAY, the 5th day of July, A.D. 1945.

J. A. CROSS, K.C., *Chief Commissioner.*

J. A. STONEMAN, *Commissioner.*

G. A. STONE, *Commissioner.*

F. M. MACPHERSON, *Commissioner.*

Upon reading the submissions filed by the Canadian Freight Association; and upon the report and recommendation of the Director, Traffic Department of the Board—

It is ordered: That the said Order No. 63316, dated March 2, 1943, be, and it is hereby, amended by striking out the word, "Beausejour", after the word, "Arborg", in the list of stations in the operative part of the Order.

J. A. CROSS,
Chief Commissioner.



ORDER No. 66206

In the matter of the application of the Great Northern Railway Company, under Section 323 of the Railway Act, for approval of a resolution adopted by the Board of Directors on June 28, 1945, authorizing the General Freight Agent, Western Traffic Manager and Passenger Traffic Manager of the Company to prepare and issue tariffs of the tolls to be charged by the Company, and to submit the same to, and file the same with, the Board.

File No. 44463

FRIDAY, the 6th day of July, A.D. 1945.

J. A. CROSS, K.C., *Chief Commissioner.*

HUGH WARDROPE, *Asst. Chief Commissioner.*

A. SYLVESTRE, K.C., *Deputy Chief Commissioner.*

J. A. STONEMAN, *Commissioner.*

Upon the recommendation of the Assistant Director, Traffic Department of the Board—

It is ordered: That the said resolution of the Great Northern Railway Company adopted on June 28, 1945, on file with the Board under file No. 44463, be, and it is hereby, approved.

J. A. CROSS,
Chief Commissioner.

ACCIDENTS REPORTED TO THE OPERATING DEPARTMENT
BOARD OF TRANSPORT COMMISSIONERS FOR CANADA,
MAY, 1945

Railway Accidents 140 with 20 killed and 158 injured
Level Crossing Accidents 18 with 6 killed and 35 injured

	Killed	Injured
Passengers .....	..	33
Employees	7	115
Others	19	45
Totals	26	193

DETAILS OF ACCIDENTS AT HIGHWAY CROSSING

Accidents K. I.

NOVA SCOTIA

- | | | | |
|---|---|---|---|
| 1 | — | 1 | Auto truck drove onto crossing in front of approaching train and was struck. Licence not given. |
| 1 | 1 | — | Pedestrian walked onto crossing in front of approaching train and was struck. |
| 1 | 1 | — | Child attempted to pass around end of car and was struck by train. |

NEW BRUNSWICK

- | | | | |
|---|---|---|--|
| 1 | — | 3 | Automobile ran into side of train. Licence, Maine 14-408. |
| 1 | 1 | 1 | Automobile drove onto crossing in front of approaching train and was struck. Licence, N.B. 3050. |
| 1 | — | 5 | Automobile drove onto crossing in front of approaching train and was struck. Licence, N.B. 16-140. |

QUEBEC

- | | | | |
|---|---|---|--|
| 1 | 1 | — | Automobile drove onto crossing in front of approaching train and was struck. Licence, Que. N-7352. |
| 1 | — | 1 | Auto truck drove onto crossing in front of approaching train and was struck. Licence, Que. FC-16542. |
| 1 | — | 3 | Auto truck drove onto crossing in front of approaching train and was struck. Licence, Que. F-23535. |

ONTARIO

- | | | | |
|---|---|---|---|
| 1 | — | 2 | Automobile drove onto crossing in front of approaching train and was struck. Licence Ont. 7-X-96. |
| 1 | — | 2 | Automobile ran into side of train. Licence, Ont. 318-M-9. |
| 1 | — | 2 | Automobile ran into side of train. Licence, Ont. 270-U-8. |
| 1 | — | 2 | Automobile ran into side of train. Licence, Ont. 820-M-8. |
| 1 | — | 1 | Pedestrian walked onto crossing in front of approaching train and was struck. |

MANITOBA

- | | | | |
|---|---|---|---|
| 1 | 2 | 2 | Auto truck drove onto crossing in front of approaching train and was struck. Licence, Man. 14-4-25. |
|---|---|---|---|

SASKATCHEWAN

- | | | | |
|---|---|---|--|
| 1 | — | 2 | Automobile ran into side of train. Licence, Sask. 7-603. |
|---|---|---|--|

ALBERTA

- | | | | |
|---|---|---|---|
| 1 | — | 6 | Horse-drawn vehicle struck by train. |
| 1 | — | 2 | Automobile struck by track motor car. Licence, Alta. 49477. |

Of the 18 accidents at highway crossings, 15 occurred at unprotected crossings and 3 at protected crossings. Eleven of the accidents occurred after sunrise and seven after sunset.
July 10, 1945.

SUMMARY OF ORDERS ISSUED BY THE BOARD

- 66185 June 26—Authorizing C.P.R. to construct branch line of railway to serve the Revelstoke Sawmill Company, Limited, at Calgary, Alta.
- 66186 June 27—Declaring C.N.R. crossing of Ridout Street, City of London, Ont., protected to Board's satisfaction.
- 66187 June 28—Authorizing C.N.R. to construct siding across Ridley Road between Concs. 6 and 7, Twp. of Grantham, and Louth St., in the City of St. Catharines, Ont.
- 66188 June 29—Approving side clearances of crane abutments on siding serving McKinnon Industries, Limited, at St. Catharines, Ont. (Niagara, St. Catharines & Toronto Ry. Co.)
- 66189 July 3—Approving location of pipe lines, etc., of Patron Oil Company Limited near C.P.R. tracks at Foam Lake, Sask.
- 66190 July 3—Approving location of pipe lines, etc., of McColl-Frontenac Oil Co. Limited near C.N.R. tracks at Eston, Sask.
- 66191 July 3—Approving location of pipe lines, etc., of McColl-Frontenac Oil Co. Limited near Nipissing Central Railway tracks at Kirkland Lake, Ont.
- 66192 July 3—Authorizing C.N.R. and C.P.R. to operate their trains over interlocking plant at Villette, Man.
- 66193 July 3—Amending Order No. 65082 so as to require protection by watchmen at crossing of Prince Street, Sydney, N.S., to commence at 6.15 a.m. instead of 6.30 a.m.
- 66194 July 3—Approving clearances of canopy over shipping platform serving Zephyr Looms & Textiles Limited at Ormstown, Que. (C.N.R.)
- 66195 July 3—Declaring C.P.R. crossing of Highway No. 41 first east of Berthier Station, Que., protected to Board's satisfaction.
- 66196 July 4—Approving Supplement No. 1 to service station contract between the Bell Telephone Co. of Canada and the Bolton Glen Telephone Association.
- 66197 July 4—Approving location of pipe lines, etc., of Imperial Oil Limited near C.N.R. tracks at North Bay, Ont.
- 66198 July 4—Declaring C.P.R. crossing of highway first east of Josephsburg Station, Alta., protected to Board's satisfaction.
- 66199 July 4—Approving relocation of pipe lines, etc., of Imperial Oil Limited near C.P.R. tracks at Milk River, Alta.
- 66200 July 4—Approving location of pipe lines, etc., of Imperial Oil Limited near tracks of C.P.R. at Calmar, Alta.
- 66201 July 4—Extending time within which Great Northern Railway Co. is to install certain protection at crossing of Columbia Street, New Westminster, B.C.
- 66202 July 5—Approving under Maritime Freight Rates Act tolls published in tariffs filed by C.N.R. under Sec. 3.
- 66203 July 5—Declaring C.N.R. crossing of Main Street, Town of Palmerston, Ont., protected to Board's satisfaction; present speed limitation of five miles per hour to be maintained.
- 66204 July 5—Amending Order 63316, dated March 2, 1943, *re* Agreed Charges for Mid-West Produce Co. Ltd., to correct an error.
- 66205 July 5—Declaring C.N.R. crossing of Ontario Street, Montreal, Que., protected to Board's satisfaction; present speed limitation of fifteen miles per hour to be maintained.
- 66206 July 6—Approving resolution of the Great Northern Railway Company adopted on June 28, 1945, *re* issue of tariffs of tolls.
- 66207 July 6—Approving under Maritime Freight Rates Act tolls published in tariffs filed by Temiscouata Railway Co. under Sec. 9.
- 66208 July 18—Declaring C.N.R. crossing of highway immediately east of station at Goodwood, Ont., protected to Board's satisfaction.
- 66209 July 6—Declaring C.N.R. crossing of Route No. 6 at mileage 19.50 Chandler Subd., Que., protected to Board's satisfaction.
- 66210 July 6—Declaring C.P.R. crossing of highway first south of Aldersyde Station, Alta., protected to Board's satisfaction.
- 66211 July 6—Approving location of pipe lines, etc., of Imperial Oil Limited near tracks of C.N.R. at Beaver River, Alta.

- 66212 July 6—Declaring N.Y.C. crossing of McGrail Avenue, Niagara Falls, Ont., protected to Board's satisfaction; present speed limitation of ten miles per hour to be maintained.
- 66213 July 9—Approving under Maritime Freight Rates Act tolls published in tariffs filed by C.N.R. under Sec. 3.
- 66214 July 9—Authorizing the Toronto Harbour Commissioners to construct branch line of railway to serve the Standard Chemical Co. Limited, in the City of Toronto, Ont.
- 66215 July 9—Authorizing C.N.R. to improve sight lines on road allowance at mileage 16.62 Oakville Subd., Clarkson, Ont.
- 66216 July 9—Rescinding Order No. 63002, dated November 26, 1942, *re* Pacific Coast, Blackout Areas.
- 66217 July 9—Authorizing C.N.R. to carry out changes at interlocking plant at crossing of their tracks and tracks of British Columbia Electric Railway Co., Ltd., Chilliwack, B.C.
- 66218 July 10—Declaring C.N.R. crossing of highway first north of Elnora Station, Alta., protected to Board's satisfaction.
- 66219 July 10—Approving amendment to agreement between the British Columbia Telephone Company to the Okanagan Telephone Company.
- 66220—July 10—Authorizing the Council of the United Townships of Neelon and Garson, Ont., to construct highway crossing over tracks of C.P.R. at mileage 75.4 Cartier Subd., Ont.
- 66221 July 11—Approving Supplement No. 1 to service station contract between the Bell Telephone Co. of Canada and the Commissioners for the Telephone System of the Municipality of Twp. of Chinguacousy.
- 66222 July 11—Authorizing C.P.R. to join its tracks with the tracks of the Cornwall Street Railway, Light & Power Co., Ltd., Cornwall, Ont.
- 66223 July 11—Declaring C.N.R. crossing of Nairn Avenue first east of Beach Junction, Man., protected to Board's satisfaction.
- 66224 July 11—Declaring St. Lawrence & Adirondack Railway crossing of St. Louis Road, Town of Beauharnois, Que., protected to Board's satisfaction.
- 66225 July 12—Extending time within which C.N.R. were required to install protection at their crossing of 93rd Street, Edmonton, Alta.
- 66226 July 12—Extending time within which C.N.R. were required to install protection at crossing of their Lakehead Division over Arthur Street, Fort William, Ont.
- 66227 July 10—Directing that all trains of C.N.Rys. be limited to a rate of speed not exceeding 10 m.p.h. when approaching and being within 500 ft. of crossing of Provincial Highway No. 21 at Allenford, Ont.
- 66228 July 13—Approving Traffic Agreement and Supplement No. 1 between the Bell Telephone Company of Canada and the East Luther Telephone System.
- 66229 July 13—Extending time within which C.N.R. were required to install protection at crossing of Norwich Street, Woodstock, Ont.
- 66230 July 13—Extending time within which C.N.R. were required to install protection at crossing of Wilson Street, Woodstock, Ont.
- 66231 July 13—Authorizing C.P.R. to construct branch line of railway to serve Hi-Way Refineries Limited at Regina, Sask.
- 66232 July 13—Authorizing C.N.R. to reconstruct highway undercrossing and creek crossing at mileage 31.1 White Bear Subd., Sask.
- 66233 July 13—Extending time within which N.Y.C. Railroad was required to install protection at crossing at Talbot Street, Essex, Ont.
- 66234 July 13—Authorizing Victoria Lumber Company Limited to install a mechanical interlocking plant at crossing of its tracks with tracks of Esquimalt & Nanaimo Ry. Co. at mileage 50.7 Victoria Subd., Vancouver Is., B.C.
- 66235 July 13—Declaring C.P.R. crossing of highway third south of Lang, Sask., protected to Board's satisfaction.
- 66236 July 14—Authorizing C.N.R. to make changes to automatic protection at crossing of 115th Ave., Edmonton, Alta.
- 66237 July 14—Approving relocation of pipe lines, etc., of Canadian Oil Companies, Ltd., near C.N.R. tracks at Campbellton, N.B.
- 66238 July 16—Approving location of pipe lines, etc., of Imperial Oil Limited near Northern Alberta Railways Co. tracks at Manola, Alta.

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The Board of Transport Commissioners for Canada

Judgments, Orders, Regulations and Rulings

Vol. XXXV

Ottawa, August 15, 1945

No. 10

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Application of the City of Galt, in the Province of Ontario for an Order granting it leave to construct a highway across the railway of the Canadian National Railways and the railway of the Grand River Railway where Jarvis Street in the said City of Galt crosses the lands of the Canadian National Railways and the Grand River Railway, and fixing and apportioning the cost of construction and maintenance of such highway crossing; and consideration of the matter of protection at said proposed crossing and the distribution of the cost of construction and maintenance of such protection and,

Consideration, as an alternative to the said application, of the construction of a highway across each of said railways at Roxboro Road, in the said City of Galt.

File 44176

Heard at Galt, Ontario, June 26, 1945.

Mr. HECTOR A. STEWART, appeared for the City of Galt.

Mr. A. K. DYSART, for the Canadian National Railways.

Mr. F. D. TURVILLE, for the Grand River Railway Company.

JUDGMENT

STONEMAN, *Commissioner*:

This is an application of the City of Galt, in the Province of Ontario for an Order granting it leave to construct a highway across the railway of the Canadian National Railways and the railway of the Grand River Railway where Jarvis Street in the said City of Galt crosses the lands of the Canadian National Railways and the Grand River Railway, and fixing and apportioning the cost of construction and maintenance of such highway crossing; and consideration of the matter of protection at said proposed crossing and the distribution of the cost of construction and maintenance of such protection and, Consideration, as an alternative to the said application, of the construction of a highway across each of the said railways at Roxboro Road, in the City of Galt.

On December 2, 1944, Solicitors for the City of Galt, filed formal application with the Board to establish a railway crossing where Jarvis Street crosses the lands of the Canadian National Railways and the Grand River Railway Company, and in their letter to the Board dated 13th December, 1944, they advised the Board that Notice of the application and plan had been served on the Canadian National Railways and the Canadian Pacific Railway Company.

Following submissions filed by the railways and subsequent correspondence from the interested parties, the Board's District Engineer, Mr. George Kydd, made an inspection on the ground on March 21, 1945, accompanied by representatives of all interested parties, and submitted his report, dated March 22, 1945, to the Board.

At the hearing, Counsel for the Applicant (hereinafter referred to as the City) contended, in support of the application, that a crossing is necessary at either Jarvis Street or Roxboro Road, for the following reasons; That the Manchester Survey consisting of 112 houses within the City proper and housing 116 families is on the opposite side of the railway from the business section and the school, and which people living in the Manchester area must reach in order to do business or attend school; that the only legalized public crossings are located 3,600 feet apart, one at Hespeler Road and one at Samuelson Street, which means that a pedestrian desiring to get to the business section, or the school, would have to travel approximately one-half mile out of their way in order to cross the railway on an established crossing. The result therefore is wide-spread trespass by pedestrians over the railway throughout the affected area, which the City feel should be corrected in some way because of the danger involved. It is the City's contention that if a level highway crossing is constructed across the railways at either Jarvis Street or Roxboro Road the public could be educated to use it, and thus reduce, if not entirely eliminate, the danger now existing.

On the other hand, the Grand River Railway Company and the Canadian National Railways (hereinafter referred to as the Railways) object to a level crossing being authorized at either Jarvis Street or Roxboro Road, not only because it would be a hazardous crossing for both highway and railway traffic, but would seriously interfere with railway operation in the area. The railways submit that if a public highway crossing is to be authorized in this area it should be by the construction of either a subway or a viaduct. In my opinion, the cost of either structures would, under the circumstances, be prohibitive. They agree that in the whole area trespassing is substantial and extremely hazardous.

The railways are senior at the points in question, and Counsel for the railways argue that the senior and junior rule should apply and the whole of the cost placed upon the City, if a crossing is authorized at either point, but they would be prepared to recommend to their principals the fencing of their right-of-way.

Mr. Turville, Counsel for the Grand River Railway Company, at p. 1071-72 of the record (Vol. 718) says:—

"As I say, without specific instructions, I would be inclined to think my principals might possibly be prepared to consider the construction of a chain link fence on their side which would serve, in all events, to assist in protecting the children so long as we can keep pedestrians with pliers and pinchers from cutting too much of it."

Mr. Dysart, Counsel for the Canadian National Railways at p. 1073, says:—

"I would like to add one word to the suggestion of my learned friend which seems to be quite a sensible one. I would be prepared to recommend the same thing to my principals, but that is all predicated upon the junior and senior rule remaining inviolate."

From a perusal of the evidence, a study of the Exhibits filed and from reading the report of our District Engineer it is clearly shown that the development of Manchester Suburb, or survey, has placed residents of the area in a location which makes it necessary for them to take a long-round-about route in order to reach the school, business or down-town section of the City over a legalized railway crossing. This results in very substantial pedestrian trespassing over the railways. Exhibit No. 4, a traffic count of pedestrians crossing the railway right of way at Jarvis Street and Roxboro Road, on June 15 and 16, 1945, shows that substantial numbers were crossing, some of whom were wheeling baby-carriages and some with bicycles. Train movements in the area where the crossing is applied for amount to 95 per day—a number of which are high-speed movements. There are seven railway tracks at Jarvis Street and four at Roxboro Road. There is no question but that a difficult situation has developed for pedestrians in this area. The situation concerning vehicular traffic is not so apparent. While it is some inconvenience, it is not a serious handicap for vehicular traffic to have to go the distance necessary to reach a legalized level railway crossing.

In addition to all that has been placed before us, we also had the advantage during the hearing at Galt, of a view of the location of the proposed crossing and surrounding area, on the ground, in company with representatives of the City and each of the railways.

I would therefore dismiss the application for a public highway level crossing over the railways at Jarvis Street in the City of Galt. And, further, I do not think that such a crossing should be authorized at Roxboro Road. It will not, therefore, be necessary at this time, to deal with the question of distribution of costs.

As earlier indicated, trespassing by pedestrians across the railways in the vicinity of Jarvis Street and Roxboro Road is, in my opinion, a serious problem and one which should have further and early study on the part of the City and each of the railways with the view of arriving at some practical solution for its elimination.

Without presuming to express any definite opinion, at this time, as to precisely what should be done, I suggest that consideration should be given to the construction of a public pedestrian crossing of some kind at Jarvis Street, or Roxboro Road, or in the vicinity. Such a crossing at Roxboro Road, from the point of view of its use by the school children, has substantial advantage, in that Roxboro Road adjoins the school property. This would facilitate supervision of its use by the children when crossing the tracks of the railways.

Further consideration should, I think, also be given to the amount of fencing of the railways' property that may be necessary, to assist in the prevention of trespassing, and the nature and kind of fence most suitable for the purpose.

The Board will be pleased to have one of its Engineers visit Galt at an early date to confer with the City and railway officials with a view of reaching some practical and effective solution of a difficult problem.

Order to issue dismissing the application.

J. A. STONEMAN.

OTTAWA, July 19, 1945.

I concur,

J. A. CROSS,
A. SYLVESTRE.

ORDER No. 66275

In the matter of the application of the City of Galt, in the Province of Ontario, for an Order granting it leave to construct a highway across the railway of the Canadian National Railways and the railway of the Grand River Railway where Jarvis Street, in the said City of Galt, crosses the lands of the Canadian National Railways and the Grand River Railway; and fixing and apportioning the cost of construction and maintenance of such highway crossing;

And in the matter of the consideration of the matter of protection at said proposed crossing and the distribution of the cost of construction and maintenance of such protection; and

Consideration, as an alternative to the said application, of the construction of a highway across each of said railways at Rexboro Road, in the said City of Galt:

File No. 44176

MONDAY, the 23rd day of July, A.D. 1945.

J. A. CROSS, K.C., *Chief Commissioner.*

A. SYLVESTRE, K.C., *Deputy Chief Commissioner.*

J. A. STONEMAN, *Commissioner.*

Upon hearing the application at the sittings of the Board held at Galt, Ontario, on the 26th day of June, 1945, in the presence of Counsel for the City of Galt, the Canadian National Railways, and the Grand River Railway, and what was alleged,—

It is ordered: That the application be, and it is hereby dismissed.

J. A. CROSS,

Chief Commissioner.

ORDER No. 66287

In the matter of the application of the Canadian Freight Association, under Section 322 of the Railway Act, for approval of proposed Supplement No. 11 to Canadian Freight Classification No. 19, on file with the Board under file No. 33365.135:

MONDAY, the 23rd day of July, A.D. 1945.

J. A. CROSS, K.C., *Chief Commissioner.*

HUGH WARDROPE, *Asst. Chief Commissioner.*

J. A. STONEMAN, *Commissioner.*

Whereas notice has been given by the Canadian Freight Association in *The Canada Gazette*, as required by Section 322 of the Railway Act, and copies of the said Supplement furnished to the parties named in the General

Orders of the Board Nos. 271, 348, 353, 469 and 471, with the request that their objections, if any, be filed with the Board within thirty days; no one offering any objection;

And upon the recommendation of the Director, Traffic Department of the Board,—

It is ordered: That the said Supplement No. 11 to Canadian Freight Classification No. 19, on file with the Board under file No. 33365.135, be, and it is hereby, approved.

A. SYLVESTRE,

Deputy Chief Commissioner.

ACCIDENTS REPORTED TO THE OPERATING DEPARTMENT—
BOARD OF TRANSPORT COMMISSIONERS FOR CANADA,
JUNE, 1945

Railway Accidents 147 with 20 killed and 157 injured
Level Crossing Accidents 28 with 14 killed and 30 injured

	Killed	Injured
Passengers	1	33
Employees	9	109
Others	24	45
Totals	34	187

DETAILS OF ACCIDENTS AT HIGHWAY CROSSINGS

PRINCE EDWARD ISLAND

Accidents K. I.
1 — 1 Auto truck ran into side of train. Licence not given.

NEW BRUNSWICK

1 — 1 Automobile drove onto crossing in front of approaching train and was struck. Licence N.B. 14-529.

QUEBEC

1 — 1 Pedestrian passed under gates in lowered position and was struck by train.
1 — 3 Automobile ran into side of train. Licence Que. S-933.
1 1 1 Automobile ran into side of train. Licence Que. 76-280.
1 2 3 Automobile drove onto crossing in front of approaching train and was struck. Licence Que. F-314.
1 — 1 Auto truck drove onto crossing in front of approaching train and was struck. Licence Que. L-790.
1 2 — Auto truck drove onto crossing in front of approaching train and was struck. Licence Que. F-13.
1 1 — Pedestrian walked onto crossing in front of approaching train and was struck.

ONTARIO

1 — 1 Horse-drawn milk wagon struck by train.
1 — 2 Automobile drove onto crossing in front of approaching train and was struck. Licence Ont. 612-E-6.
1 — 2 Automobile struck hand car. Licence not given.
1 — 2 Automobile drove onto crossing in front of approaching train and was struck. Licence Ont. 4-D-20.
1 — 1 Automobile drove onto crossing in front of approaching train and was struck. Licence Ont. 39-F-40.
1 1 1 Automobile drove onto crossing in front of approaching train and was struck. Licence Ont. 93-Y-61.
1 1 — Pedestrian walked onto crossing in front of approaching train and was struck.
1 1 — Pedestrian walked onto crossing in front of approaching train and was struck.
1 — 2 Automobile drove onto crossing in front of approaching train and was struck. Licence not given.
1 — 1 Automobile which was stopped foul of track on crossing was struck by train. Licence not given.
1 — 1 Automobile ran into side of train. Licence Ont. 1-U-254.

MANITOBA

1 1 — Pedestrian walked onto crossing in front of approaching train and was struck.
1 1 — Automobile drove onto crossing in front of approaching train and was struck. Licence Man. 68136.
1 2 — Automobile drove onto crossing in front of approaching train and was struck. Licence Man. 54702.

DETAILS OF ACCIDENTS AT HIGHWAY CROSSINGS—*Concluded*

SASKATCHEWAN

Accidents K. I.

- | | | | |
|---|---|---|---|
| 1 | — | 1 | Auto truck drove onto crossing in front of approaching train and was struck. Licence Sask. C-563. |
| 1 | — | 2 | Automobile drove onto crossing in front of approaching train and was struck. Licence Sask. 80-11. |
| 1 | — | 2 | Auto truck ran into side of train. Licence Sask. F-31-618. |

ALBERTA

- | | | | |
|---|---|---|--|
| 1 | 1 | — | Automobile drove onto crossing in front of approaching train and was struck. Licence Alta. 4-6866. |
| 1 | — | 1 | Automobile drove onto crossing in front of approaching train and was struck. Licence Alta. 38-174. |

Of the 28 accidents at Highway Crossings, 21 occurred at Unprotected Crossings and 7 at Protected Crossings. Twenty-two of the accidents occurred after Sunrise and six after Sunset.

July 31st, 1945.

SUMMARY OF ORDERS ISSUED BY THE BOARD

- 66239 July 16—Approving location of pipe lines, etc., of Imperial Oil Limited near C.P.R. tracks at Grassy Lake, Alta.
- 66240 July 16—Approving location of pipe lines, etc., of Imperial Oil Limited near C.N.R. tracks at Vimy, Alta.
- 66241 July 16—Approving location of pipe lines, etc., of Imperial Oil Limited near C.N.R. tracks at Colinton, Alta.
- 66242 July 16—Approving location of pipe lines, etc., of Imperial Oil Limited near C.N.R. tracks at Elk Point, Alta.
- 66243 July 16—Approving location of pipe lines, etc., of Imperial Oil Limited near C.N.R. tracks at Warspite, Alta.
- 66244 July 16—Approving location of pipe lines, etc., of Imperial Oil Limited near C.N.R. tracks at Mayerthorpe, Alta.
- 66245 July 16—Approving location of pipe lines, etc., of Imperial Oil Limited near C.P.R. tracks at Myrnam, Alta.
- 66246 July 16—Declaring C.N.R. crossing of St. Joseph Street in Parish of Ste. Martine, Que., protected to Board's satisfaction.
- 66247 July 16—Authorizing C.P.R. and C.N.R. to operate their trains through interlocking plant at mileage 11·8 Windsor Subd. of C.P.R. near Komoka, Ont.
- 66248 July 16—Approving under Maritime Freight Rates Act tolls published in tariffs filed by C.N.R. under Sec. 3.
- 66249 July 16—Approving under Maritime Freight Rates Act tolls published in tariffs filed by Maritime Coal, Railway & Power Company, Ltd., under Sec. 9.
- 66250 July 17—Declaring C.N.R. crossing of George V Avenue, Montreal East, Que., protected to Board's satisfaction.
- 66251 July 17—Declaring Quebec Railway, Light and Power Co's crossing of St. Gregoire Street protected to Board's satisfaction; present speed limitation of ten miles per hour to be maintained.
- 66252 July 18—Approving location of pipe lines, etc., of Imperial Oil Limited near C.N.R. tracks at Glendon, Alta.
- 66253 July 18—Approving location of pipe lines, etc., of Imperial Oil Limited near C.P.R. tracks at Carstairs, Alta.
- 66254 July 18—Approving location of pipe lines, etc., of Imperial Oil Limited near C.N.R. tracks at Athabasca, Alta.
- 66255 July 18—Approving location of pipe lines, etc., of Imperial Oil Limited near C.N.R. tracks at Oyen, Alta.
- 66256 July 18—Approving location of pipe lines, etc., of Imperial Oil Limited near C.N.R. tracks at Delburne, Alta.
- 66257 July 17—Declaring C.P.R. crossing of highway first east of station at Oak Lake, Man., protected to Board's satisfaction.
- 66258 July 17—Authorizing C.P.R. to reconstruct bridge 37·3 Little Current Subd.
- 66259 July 18—Declaring C.P.R. crossing of Provincial Trunk Highway No. 3 first east of Pilot Mound, Man., protected to Board's satisfaction.
- 66260 July 19—Approving under Maritime Freight Rates Act tolls published in tariffs filed by Canadian Freight Association under Sec. 3.
- 66261 July 19—Authorizing C.N.R. to remove present station building at Brechin East, Ont.
- 66262 July 19—Approving relocation of pipe lines, etc., of McColl-Frontenac Oil Co. Limited near C.P.R. tracks at Yorkton, Sask.
- 66263 July 20—Authorizing C.P.R. to construct branch line of railway to serve The Boake Manufacturing Company Limited at mileage 0·76 MacTier Subd., County of York, Ont.
- 66264 July 20—Authorizing C.P.R. to make changes in its interlocking plant at crossing of C.P.R. and C.N.R. at Brampton, Ont.
- 66265 July 20—Authorizing Great Northern Railway Co. to construct branch line of railway to serve McLennan, McFeely & Prior Limited, City of Vancouver, B.C.

- 66266 July 20—Authorizing C.N.R. to connect their stock yards spur with tracks of Greater Winnipeg Water District Railway, City of St. Boniface, Man.
- 66267 July 20—Authorizing Thousand Islands Railway to construct siding to serve Gananoque District Co-Operative Club, across River Street, Town of Gananoque, Ont.
- 66268 July 23—Approving location of pipe lines, etc., of McColl-Frontenac Oil Co. Limited near C.N.R. tracks at Stratford, Ont.
- 66269 July 23—Authorizing C.N.R. to reconstruct bridge over Lachevrotiere River at mileage 37·22 La Tuque Subd., Que.
- 66270 July 23—Declaring C.N.R. crossing of highway a mile north of Cannington Station, Ont., protected to Board's satisfaction.
- 66271 July 23—Declaring C.P.R. crossing of highway 1·4 miles west of Perth Station, Ont., protected to Board's satisfaction.
- 66272 July 23—Declaring C.N.R. crossing of highway mileage 83·33 Matapedia Subd., Que., protected to Board's satisfaction.
- 66273 July 23—Approving under Maritime Freight Rates Act tolls published in tariffs filed by C.N.R. under Sec. 3.
- 66274 July 23—Approving relocation of pipe lines, etc., of McColl-Frontenac Oil Co. Limited near C.N.R. at Parkhill, Ont.
- 66275 July 23—Dismissing application of City of Galt, Ont., for Order granting it leave to construct highway across C.N.R. and Grand River Railway where Jarvis St. crosses lands of C.N.R. and Grand River Railway.
- 66276 July 23—Authorizing The Bell Telephone Co. of Canada to construct, etc., its line or lines of telephone across and under certain highways or road allowances in County of Middlesex, Ont.
- 66277 July 23—Authorizing The Bell Telephone Co. of Canada to construct, etc., its line or lines of telephone across and under certain highways or road allowances in Township of London, County of Middlesex, Ont.
- 66278 July 23—Authorizing Dept. of Public Works of Alta. to construct crossing of C.P.R. on road allowance at mileage 99·6 Willingdon Subd., Alta.
- 66279 July 23—Amending Order No. 64528 dated 26th February, 1944, authorizing Dept. of Public Works of B.C. to construct overhead crossing of C.P.R. at west end of Bridge 54·7 Coquihalla Subd., B.C.
- 66280 July 23—Authorizing C.N.R. to use and operate bridge at mileage 4·2 Cowichan Subd., Vancouver Island, B.C.
- 66281 July 23—Authorizing C.N.R. to construct new main line across Pasqua Street, Regina, Sask.
- 66282 July 23—Authorizing C.N.R. to reconstruct bridge over Rosebud River at mileage 69·2 Drumheller Subd., Alta.
- 66283 July 23—Authorizing C.P.R. to construct extension to passing siding at mileage 85·92 Windsor Subd., Ont.
- 66284 July 23—Authorizing C.N.R. to replace existing distant signals on their line with search light type power-operated signals at crossing of their tracks with tracks of the C.P.R. Co's. Mission Branch at mile 88·12 Yale Subd., near Matsqui, B.C.
- 66285 July 24—Approving location of pipe lines, etc., of Standard Chemical Company Limited near C.N.R. tracks at Queens Quay and Bonnycastle Avenue, City of Toronto, Ont.
- 66286 July 24—Amending Order No. 65160, dated August 8, 1944, *re* protection at Bruce Street crossing, at Galt, Ont. (L.E. & N. Ry.).
- 66287 July 23—Approving Supplement No. 11 to Canadian Freight Classification No. 19.
- 66288 July 23—Authorizing C.P.R. to construct extension to passing siding at grade across road allowance between Lots 4 and 5, Con. 3, Twp. of Lobo, County of Middlesex, Ont.
- 66289 July 24—Authorizing C.N.R. to operate their passenger trains over crossing with C.P.R. at mileage 67 Cornwall Subd., near Cornwall, Ont.
- 66290 July 24—Authorizing C.P.R. to make changes to its interlocking plant at crossing of its railway with railway of The International Nickel Company of Canada, Limited at mileage 3·2 Nickel Subdivision, at Clara Belle, Ont.

- 66291 July 25—Approving location of pipe lines, etc., of The British American Oil Company, Limited near C.P.R. tracks at Morse, Sask.
- 66292 July 25—Declaring C.P.R. crossing of highway at mileage 28·2 Wynyard Subd., Sask., protected to Board's satisfaction.
- 66293 July 25—Declaring C.P.R. crossing of highway first west of Clonmel Station, Sask., protected to Board's satisfaction.
- 66294 July 25—Declaring C.N.R. crossing of highway first north of Gorlitz Station, Sask., protected to Board's satisfaction.
- 66295 July 26—Approving relocation of pipe line, etc., of Sudbury Oil Company near C.P.R. tracks at Sudbury, Ont.
- 66296 July 26—Approving relocation of pipe lines, etc., of Canadian Oil Companies, Limited near tracks of C.P.R. at Sudbury, Ont.
- 66297 July 26—Approving location of portable Station of C.N.R. at Ticouape, Que.
- 66298 July 26—Approving clearances of proposed overhead I-Beam over siding serving Massey-Harris Company, Limited, City of Woodstock, Ont. (C.N.Rys.).
- 66299 July 26—Extending time within which C.N.Rys. were required to install protection at crossing of highway just west of Strathmore Station, Pointe Claire, Que.
- 66300 July 26—Extending time with which C.P.R. was required to install protection at crossing of highway just west of Strathmore Station, Pointe Claire, Que.
- 66301 July 27—Authorizing T. & N.O. Ry. to make changes to signal protection at revised crossing with C.N.Rys. at Rouyn, Que.



The Board of Transport Commissioners for Canada

Judgments, Orders, Regulations and Rulings

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Application of Joseph W. Beggs and Maud Beggs, his wife, dated March 7, 1945, for an Order under the appropriate section or sections of the Railway Act, directing and requiring the Canadian Northern Railway and the Canadian National Railways to remove a ditch or drain constructed wrongfully, illegally and improperly, in, over and across and along the lands and premises of the applicants, namely;

All that part of Legal Subdivision Five in Section 19, Township 18, Range 7, East of the Principal Meridian of Manitoba, as is East of the right of way of the railway of the Canadian Northern Railway and the Canadian National Railways at Grand Beach in the Province of Manitoba, in or about the autumn of the year 1943, or in or about the spring of the year 1944;

And for an Order directing and requiring the said Railway Companies to fill in the said ditch or drain and to place the lands and premises in the same condition and in as good a condition as the said lands and premises were before the Railway Companies constructed the said ditch or drain;

File No. 44269

and

Application of Joseph W. Beggs and Maud Beggs, his wife, for an Order under the appropriate section or sections of the Railway Act, directing and requiring the Canadian Northern Railway Company and the Canadian National Railways to construct the necessary ditches and drains and to construct the necessary and appropriate drainage system sufficient to drain the lands of the said two railways situate between and lying along, and adjoining and adjacent to the lands and premises of the applicants, namely;

Legal Subdivisions 1, 2, 3 and 4, and part of Legal Subdivision 5, at Grand Beach, Manitoba, in Section 19, Township 18, Range 7, East of the Principal Meridian;

And for other relief, as set out in the application dated March 23, 1945.

File No. 44269.1

Mr. H. P. BLACKWOOD, K.C., appeared for the applicants.

Mr. A. K. DYSART and Mr. W. J. B. GRIERSON appeared for the Canadian Northern Railway and the Canadian National Railways.

JUDGMENT

WARDROPE, *Assistant Chief Commissioner*:

The nature of these two applications being similar, raising as they do questions of drainage, they were heard together in the City of Winnipeg, and, accordingly, it will be convenient to dispose of them jointly.

Following the hearing, the Board caused one of its inspecting engineers to make an inspection of the locality with particular reference to the points in issue, which I will enumerate hereafter.

The inspection was made in the company of the applicants and their solicitor, and representatives of the Canadian National Railways, hereinafter referred to as the "railway." The engineer's report is now on file.

The lands of the applicants involved in the above applications are adjacent to and adjoining the right of way of the railway, and are fully described in the above applications.

The first application in Board's file No. 44269 requests the removal of a ditch which the applicants claim was constructed illegally across their lands in Legal Subdivision 5, Section 17, Township 18, Range 7, E.P.M.

This ditch is approximately 18" wide and about 1' deep, and runs easterly to the lake from a culvert at mileage 56.78 under that part of the railway's line running from Grand Marais to Grand Beach, being a short stub branch line running from the Victoria Beach line. It was dug out by personnel of the railway early in 1944, the railway alleging that the ditch so dug out was not a new ditch dug by them but that they merely cleaned out a ditch which they considered had always been there for the purpose of carrying off the water from the culvert. They alleged it had probably been constructed at the same time as the culvert.

This action on the part of the railway was taken without the consent or knowledge of the applicants.

The applicants complain that by reason of this ditch now being constructed across their lands they are put to great inconvenience, particularly at the period of the year when, as is claimed, hay is removed from these lands.

The culvert from which the ditch referred to was dug would seem to have been constructed when the line was built. It is properly located and connects with ditches on the west side of the railway running north and south from the westerly opening of the said culvert. These latter two ditches drain the lands lying to the west of this particular portion of the railway line.

The applicants complain that when the lake rises as it does from time to time over this portion of their lands and flows up to the railway embankment, the water finds its way through this culvert to the lands lying to the west of the portion of line in question; that upon the receding of the lake waters, the waters thereby impounded on the west side of the right of way escape slowly back through the culvert and maintain the applicants' lands in a moist condition for a longer period than otherwise would be the case if the culvert were not there. Consequently, they feel that the railway should be compelled to place a flood gate on the easterly side of the culvert to prevent this condition coming about.

From what was heard at the hearing, and from the report of the inspecting engineer, it would seem that the ditch complained of could be filled in without any particular disadvantage to the general drainage in the area. It would seem, also, that there is some plausibility in the applicants' contention that the function of the culvert following a rising of the lake to the railway embankment, without the addition of a flood gate, does detrimentally affect the applicants' lands.

Whether or not the Board has jurisdiction to order the railway to restore the ditch complained of to its former condition was not raised at the hearing. On the other hand, the parties were agreeable, on the merits, to abide by the decision of the Board.

I think the railway should be ordered to fill in the ditch at its own expense, and leave the lands of the applicants in the same condition they were before the ditch was dug. Further, I think the railway should, at its own expense, place a flood gate on the easterly side of the culvert and maintain the same so that it will at all times function adequately. Order to go accordingly.

II

The second application (Board's file No. 44269.1) is to require the railway to construct the necessary ditches and drains, and to construct the necessary and appropriate drainage system sufficient to drain the lands of the railway, which railway runs through the following lands of the applicants, namely, Legal Subdivisions 1, 2, 3 and 4, and part of Legal Subdivision 5 at Grand Beach, Manitoba, in Section 19, Township 18, Range 7, East of Principal Meridian.

The application may be more particularly described as one to order the railway to do the following,—

(1) To fill in a reservoir or well formerly used for the railway's water supply and now abandoned, near the east wye switch, which reservoir or well lies partly on the lands of the railway and partly on the lands of the applicants;

(2) Construct a culvert on the north side of the right of way near the easterly apex of the wye to drain the waters that from time to time are impounded within the wye;

(3) To continue the drainage ditch now dug on the southerly side of the wye to a point about 350' to the west of the east wye switch;

(4) To fill in the easterly apex inside the wye to a level sufficient to allow the waters impounded therein to flow through the culvert mentioned in item No. 2 above and so prevent constant seepage through the railway's embankment on to the lands of the applicants.

With regard to the reservoir or well (item No. 1) now in disuse, it would seem that the railway has from time to time promised the applicants that this would be filled in. The Board's engineer reports that it has been partly filled in only. The applicants complain that the existence of this water, which has no way of draining out, maintains their adjacent lands in a moist condition.

The Board's engineer, following his inspection, recommended that this reservoir or well should be filled in. Incidentally, during his inspection, he also found it to be a distinct hazard to any child or children trespassing upon the railway as they went down to the bridge to fish, and his further recommendation is that it be filled in forthwith.

He reports that this reservoir or well in its present condition is about 20' in diameter and about 10' deep, and is not covered.

I would approve the recommendation of the Board's engineer.

I would further approve his recommendation that upon the filling in of this reservoir or well the right of way fence at this point should be completed.

The Board's engineer also reports that since the application was heard the railway has placed an 18" corrugated iron culvert pipe as requested by the applicants in item No. 2 above, so it is unnecessary to deal further with this item except as to maintenance.

Dealing with item No. 3, the railway has already constructed a ditch from the bridge at the lagoon in a westerly direction to the east wye switch on the north side of the railway, as shown on exhibit No. 9, which is a plan showing contours, ditches and other matters concerned with Grand Beach and district, and filed by the railway. With this ditch the applicants have no complaint. Their complaint deals with the ditch constructed on the south side of this portion

of the railway running from the bridge at the lagoon to a point about 350' short of the east wye switch, where it stops. The applicants would like this ditch to be continued on in a westerly direction to a point about 350' beyond the east wye switch, which point is approximately opposite the present pipe line, as shown on exhibit No. 9.

From the contour plan, and from the information gained by the inspecting engineer on the spot, and from what was heard at the hearing, it would seem this addition to the south ditch, if there is any advantage to be gained by it at all, would be more for the purpose of draining the applicants' lands than that of correcting any drainage situation created by the railway in this immediate locality.

Consequently, I think that if this suggested extension to the south ditch is to be constructed it should be at the expense of the applicants.

Looking at item No. 4, a study of exhibit No. 9 shows that the land within the confines of the wye slopes towards the wye's easterly apex. Water collects in here and, with no outlet, seeps through the railway embankment on to the applicants' lands. The situation has been somewhat corrected since the construction of the culvert referred to in item No. 2. However, although the placing of this culvert has lowered the water materially in this corner, the cause of the complaint has not been fully eliminated.

I think the railway should fill in this depressed area so that the new culvert will take care of all surplus water in this corner of the wye.

Accordingly, and summing up the items referred to in the second application, I would order,—

- (1) That the reservoir or well referred to above be filled in forthwith by the railway, at its own expense, and, upon completion of the filling in, that the right of way fence at this point be completed;
- (2) That the culvert now said to be constructed by the railway, as shown on exhibit No. 9 in red (proposed), on the north leg of the wye, be maintained by the railway so that it will at all times function adequately;
- (3) That the railway fill in the easterly apex of the wye, at its own expense, to the depth of the invert of the 18" corrugated iron pipe recently installed.

I would dismiss the application to extend the ditch on the south side of the railway, as shown on exhibit No. 9, and referred to in item No. 3 above. Order to go accordingly.

HUGH WARDROPE.

August 3, 1945.

I concur:

J. A. CROSS,
FRANK M. MACPHERSON,

ORDER No. 66321

In the matter of the application of Joseph W. Beggs and Maud Beggs, his wife, dated March 7, 1945, for an Order, under the appropriate section or sections of the Railway Act, directing and requiring the Canadian Northern Railway Company and the Canadian National Railways to remove a ditch or drain constructed wrongfully, illegally and improperly in, over and across and along the lands and premises of the Applicants, namely:

All that part of Legal Subdivision Five in Section 19, Township 18, Range 7, East of the Principal Meridian of Manitoba, as is east of the right of way of the railway of the Canadian Northern Railway Company and the Canadian National Railways at Grand Beach, in the Province of Manitoba, in or about the autumn of the year 1943, or in or about the spring of the year 1944;

And for an Order directing and requiring the said Railway Companies to fill in the said ditch or drain and to place the lands and premises in the same condition and in as good a condition as the said lands and premises were before the Railway Companies constructed the said ditch or drain.

File 44269

FRIDAY, the 3rd day of August, A.D. 1945.

J. A. CROSS, K.C., *Chief Commissioner.*

HUGH WARDROPE, *Asst. Chief Commissioner.*

F. M. MACPHERSON, *Commissioner.*

Upon hearing the application at the sittings of the Board held at Winnipeg on April 30, 1945, in the presence of Counsel for the Applicants and the Canadian National Railways, and what was alleged—

It is ordered:

1. That the Canadian National Railways be, and they are hereby, required forthwith to fill in, at their own expense, the off-take ditch to the east of their culvert at mileage 56.78 at Grand Beach Manitoba, from the edge of their right of way as far as such ditch was dug or cleaned out in 1944; and to leave Applicants' lands in the same condition as they were before the ditch was dug.

2. That the Canadian National Railways be, and they are hereby, required forthwith to place, at their own expense, a flood gate on the easterly side of the said culvert, and to maintain the same so that it will at all times function adequately.

J. A. CROSS,

Chief Commissioner.

ORDER No. 66322

In the matter of the application of Joseph W. Beggs, and Maud Beggs his wife, hereinafter called the "Applicants", for an Order, under the appropriate section or sections of the Railway Act, directing and requiring the Canadian Northern Railway Company and the Canadian National Railways to construct the necessary ditches and drains, and to construct the necessary and appropriate drainage system, sufficient to drain the lands of the said two railways situate between and lying along and adjoining and adjacent to the lands and premises of the Applicants, namely:

Legal Subdivisions 1, 2, 3 and 4 and part of Legal Subdivision 5, at Grand Beach, Manitoba, in Section 19, Township 18, Range 7, East of the Principal Meridian;

And for other relief, as set out in the application dated March 23, 1945.

File No. 44269.1

FRIDAY, the 3rd day of August, A.D. 1945.

J. A. CROSS, K.C., *Chief Commissioner.*

HUGH WARDROPE, *Asst. Chief Commissioner.*

F. M. MACPHERSON, *Commissioner.*

Upon hearing the application at the sittings of the Board held at Winnipeg on the 30th day of April 1945, in the presence of Counsel for the Applicants and the Railway Companies, and what was alleged—

It is ordered:

1. That the Canadian National Railways forthwith fill in, at their own expense, the reservoir or well near their east wye switch at Grand Beach, Manitoba; and that, after such filling in has been done, the Railways complete their right of way fence at the said point.

2. That the corrugated iron culvert pipe under the north leg of the wye track of the Canadian National Railways, constructed by the said Railways as shown on Exhibit No. 9 in red (proposed) on the north leg of the wye, be maintained by the said Railways so that it will at all times function adequately.

3. That the Canadian National Railways fill in, at their own expense, the easterly apex of the wye to the depth of the invert of the said culvert pipe.

4. That the application to extend the ditch on the south side of the railway, as shown on the said Exhibit No. 9, be, and it is hereby, dismissed.

J. A. CROSS,

Chief Commissioner.

ORDER No. 66313

In the matter of the Order of the Board No. 60258, dated January 30, 1941, fixing charges for the transportation of lumber and forest products between stations in Western Canada for Chisholm Saw Mills Ltd. from Mitsue, Slave Lake and Smith, Alberta.

File No. 40994.13

TUESDAY, the 31st day of July, A.D. 1945.

J. A. CROSS, K.C., *Chief Commissioner.*

HUGH WARDROPE, *Asst. Chief Commissioner.*

J. A. STONEMAN, *Commissioner.*

F. M. MACPHERSON, *Commissioner.*

Upon reading the submissions filed by the Canadian Freight Association, including notice from Chisholm Saw Mills Ltd. that they have discontinued operations at Mitsue, Alberta; and upon the report and recommendation of the Director of the Traffic Department of the Board—

It is ordered: That the said Order No. 60258, dated January 30, 1941, be, and it is hereby, amended by striking out Mitsue, Alberta, as a shipping point for the Chisholm Saw Mills Ltd.

J. A. CROSS,
Chief Commissioner.

SUMMARY OF ORDERS ISSUED BY THE BOARD

- 66302. July 27—Authorizing C.N.R. to operate their passenger trains over crossing with C.P.R. at Komoka, Ont.
- 66303. July 27—Amending Order No. 66277, dated July 23, 1945, *re* Bell Telephone wires across certain highways in Tp. London, Co. Middlesex, Ont.
- 66304. July 27—Approving under Maritime Freight Rates Act tolls published in tariffs filed by C.N.R. under Sec. 3.
- 66305. July 27—Declaring Toronto, Hamilton & Buffalo Railway crossing of Pond Road first east of Waterford Station, Ont. protected to Board's satisfaction.
- 66306. July 28—Authorizing C.P.R. to construct wye tracks in the Town of Emerson, Man.
- 66307. July 30—Approving location of portable station to be erected by the C.N.R. at Tingwick, Que.
- 66308. July 30—Declaring C.P.R. crossing of Russell Road at mileage 85.93 Montreal & Ottawa Subd., Ont. protected to Board's satisfaction.
- 66309. July 31—Authorizing C.N.R. to reconstruct highway undercrossing at mileage 8.8 Acadia Valley Subd., Sask.
- 66310. July 31—Authorizing C.N.R. to reconstruct highway undercrossing at mileage 2.7 Acadia Valley Subd., Sask.
- 66311. July 31—Authorizing C.P.R. to use and operate Bridge No. 68.0 over Modeste Creek on its Hoadley Subd., Alta.
- 66312. July 31—Authorizing Municipality of Grenville and Augmentation, Que., to construct highway crossing over C.P.R. at mileage 65.38 Lachute Subd., west of Pointe au Chene Station, Que.
- 66313. July 31—Amending Order No. 60258, dated January 30, 1941, *re* agreed charges for transportation of lumber and forest products between stations in Western Canada for Chisholm Saw Mills Ltd.
- 66314. Aug. 1—Declaring C.N.R. crossing of Echo Drive in the City of Ottawa, Ont. protected to Board's satisfaction.
- 66315. Aug. 2—Declaring C.N.R. crossing of Adelaide Street, London, Ont., protected to Board's satisfaction; speed limitation of five miles per hour to be maintained and all switching movements over crossing to be flagged.
- 66316. Aug. 2—Authorizing The Quebec Railway, Light & Power Company to construct branch line of railway to serve Abattoir de Quebec Incorporee in the Parish of St. Roch North, City of Quebec, P.Q.
- 66317. Aug. 6—Approving proposed station improvements at New Richmond, Que. (C.N.R.)
- 66318. Aug. 6—Approving location of pipe lines, etc., of The British American Oil Co. Ltd., near tracks of C.N.R. at Bengough, Sask.
- 66319. Aug. 6—Approving location of pipe lines, etc., of North Star Oil Limited near C.P.R. tracks at Wetaskiwin, Alta.
- 66320. Aug. 6—Approving location of pipe lines, etc., of North Star Oil Limited near C.P.R. tracks at Bowden, Alta.
- 66321. Aug. 3—Requiring C.N.R. to fill in and repair ditches on the property of Joseph W. Beggs and Maud Beggs at mileage 56.78 Grand Beach, Man.
- 66322. Aug. 3—Requiring C.N.R. to fill in reservoir and repair ditches and drains on the property of Joseph W. Beggs and Maud Beggs near Grand Beach, Man.
- 66323. Aug. 6—Approving location of pipe lines, etc., of Imperial Oil Ltd. near C.P.R. tracks at Irvine, Alta.
- 66324. Aug. 6—Approving location of pipe lines, etc., of Imperial Oil Ltd. near C.P.R. tracks at Rocky Mountain House, Alta.
- 66325. Aug. 6—Approving location of pipe lines, etc., of McColl-Frontenac Oil Co. Ltd. near C.N.R. tracks at Barrie, Ont.
- 66326. Aug. 6—Approving location of pipe lines, etc., of Coronach Co-operative Association Limited near C.P.R. tracks at Coronach, Sask.
- 66327. Aug. 6—Approving location of pipe lines, etc., of McColl-Frontenac Oil Co. Ltd. near C.P.R. tracks at Iberville, Que.
- 66328. Aug. 6—Authorizing C.N.R. to construct spur to serve Okanagan Fruit Juices Ltd. across Graham Street in the City of Kelowna, B.C.
- 66329. Aug. 6—Approving clearances of canopy on siding serving Phillips Electrical Works Ltd. at Brockville, Ont. (C.N.Rys.)

- 66330. Aug. 6—Approving clearances between platform of culvert shop building of The Pedlar People Ltd. at Oshawa, Ont., and the siding adjacent thereto. (C.N.Rys.)
- 66331. Aug. 6—Authorizing C.P.R. to construct branch line of railway to serve Swift Canadian Co. Ltd. at mileage 1.03 Mimico Cut-off, Twp. of Etobicoke, Ont.
- 66332. Aug. 6—Authorizing the City of Vancouver, B.C., to construct highway crossing over tracks of the Vancouver & Lulu Island Railway Co. at Station 110—31.5 between Fraser St. and Crompton St., Vancouver, B.C.
- 66333. Aug. 7—Approving under Maritime Freight Rates Act tolls published in Tariffs filed by C.P.R. under Sec. 9.
- 66334. Aug. 7—Approving under Maritime Freight Rates Act tolls published in Tariffs filed by Canadian Freight Association under Sec. 3.
- 66335. Aug. 9—Declaring C.P.R. crossing of highway first immediately northeast of Honeydale Shelter, N.B. protected to Board's satisfaction.
- 66336. Aug. 7—Approving under Maritime Freight Rates Act tolls published in Tariffs filed by the Témiscouata Railway Co. under Sec. 9.
- 66337. Aug. 7—Declaring C.P.R. crossing of Durham Road 1.8 miles west of Durham, Ont. protected to Board's satisfaction.
- 66338. Aug. 7—Declaring C.N.R. crossing of St. Pacome-Riviere Ouelle Highway first west of Riviere Ouelle Station, Que. protected to Board's satisfaction.
- 66339. Aug. 8—Approving location of pipe lines, etc., of McColl-Frontenac Oil Co. Ltd. near C.N.R. tracks at Bloomfield, Ont.
- 66340. Aug. 8—Approving location of pipe lines, etc., of North Star Oil Ltd. near C.P.R. tracks at Walsh, Alta.
- 66341. Aug. 8—Approving location of pipe lines, etc., of Imperial Oil Ltd. near tracks of C.P.R. at Little Current, Ont.
- 66342. Aug. 8—Approving location of pipe lines, etc., of Crown-Dominion Oil Company Ltd. near C.N.R. tracks, St. Catharines, Ont.
- 66343. Aug. 9—Authorizing C.P.R. to construct branch line of railway to serve Canada Packers Ltd. at mileage 5.65 Galt Subd., Twp. of York, Toronto, Ont.
- 66344. Aug. 9—Authorizing C.P.R. to construct branch line of railway to serve Schultz Tile and Gravel Company, Ltd., in the Town of Durham, Ont.
- 66345. Aug. 9—Declaring C.P.R. crossing of Hamford Street, Town of Lachute, Que. protected to Board's satisfaction.
- 66346. Aug. 9—Approving under Maritime Freight Rates Act tolls published in Tariffs filed by C.N.R. under Sec. 3.
- 66347. Aug. 9—Approving proposed installation of signal protection at junction of C.N.Rys. with the Quebec Central Railway at Walsh, Que.
- 66348. Aug. 9—Authorizing C.P.R. to construct two crossover tracks to serve the Ogilvie Flour Mills Co., Ltd., in the City of Fort William, Ont.
- 66349. Aug. 9—Declaring C.N.R. crossing of Hamwell Road, City of Fredericton, N.B. protected to Board's satisfaction.
- 66350. Aug.* 10—Authorizing C.N.R. to remove the existing counterweight from the bridge over the Assiniboine River at Winnipeg, Man.
- 66351. Aug. 10—Declaring C.N.R. crossing of Provincial Highway No. 49 first north of Millview Station, P.E.I., protected to Board's satisfaction.
- 66352. Aug. 10—Approving under Maritime Freight Rates Act tolls published in Tariffs filed by the Témiscouata Railway Co. under Sec. 9.
- 66353. Aug. 10—Approving proposed location of Class 4A station building at Endeavour, Sask. (C.N.R.)
- 66354. Aug. 11—Amending Order No. 66119, dated June 8, 1945 *re* speed restriction on through passenger trains into Central Station, Montreal, Que. (C.N.Rys.)
- 66355. Aug. 11—Authorizing the Toronto, Hamilton & Buffalo Ry. Co. and C.N.R. to construct two branch lines or spurs in the City of Hamilton, Ont., to serve Proctor & Gamble Co. of Canada, Ltd.
- 66356. Aug. 10—Approving under Maritime Freight Rates Act tolls published in Tariffs filed by C.N.R. under Sec. 3.
- 66357. Aug. 10—Approving location of two underground storage tanks of Maple Leaf Petroleum Ltd. near C.P.R. tracks at Dewberry, Alta.
- 66358. Aug. 10—Approving location of two additional vertical storage tanks, etc., of North Star Oil Ltd. near C.N.R. tracks at Heisler, Alta.

- 66359. Aug. 11—Approving location of pipe lines, etc., of McColl-Frontenac Oil Co. Limited near C.P.R. tracks at Beausejour, Man.
- 66360. Aug. 10—Approving location of pipe line, etc., of Imperial Oil Ltd. near Northern Alberta Railways Co. tracks at Berwyn, Alta.
- 66361. Aug. 10—Approving location of pipe line, etc., of The British American Oil Company, Ltd., near C.N.R. tracks at Prince Albert, Sask.
- 66362. Aug. 10—Authorizing Toronto Harbour Commissioners to construct a branch line of railway to serve Ogilvie Flour Mills Co. Ltd. in the City of Toronto, Ont.
- 66363. Aug. 10—Approving clearances of C.P.R. Co's. Cinder Drainage and Disposal Plant at Megantic, Que.
- 66364. Aug. 11—Approving location of pipe lines, etc., of McColl-Frontenac Oil Co. Ltd. near C.P.R. tracks at Moose Jaw, Sask.
- 66365. Aug. 11—Approving location of nine storage tanks of The British American Oil Co., Ltd., near C.N.R. tracks at Canora, Sask.
- 66366. Aug. 11—Approving location of pipe lines, etc., of the British American Oil Co., Ltd., near C.N.R. tracks at The Pas, Man.
- 66367. Aug. 14—Approving location of pipe lines, etc., of Imperial Oil Ltd., near C.P.R. at Nipawin, Sask.

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The Board of Transport Commissioners for Canada

Judgments, Orders, Regulations and Rulings

Vol. XXXV

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Application of New York Central Railroad Company, sub-lessee of the Canada Southern Railway, for an Order of the Board pursuant to Section 165A of the Railway Act granting it leave to abandon the operation of that most westerly portion of its St. Clair Branch between Petrolia Junction and the Village of Courtright in the Province of Ontario, a distance of 15.91 miles in length, as more particularly described in the application of the Railroad Company.

File No. 40892.2

Mr. Donald M. Fleming, K.C., appeared for the New York Central Railroad Company, the Applicant;

Mr. Ross W. Gray, K.C., for the County of Lambton, the Township of Enniskillen, the Township of Moore, the Township of Dawn, the Township of Brooke, the Village of Courtright and the Village of Brigden;

Mr. A. W. McIntyre represented the Canada and Dominion Sugar Company Limited;

Mr. J. A. Conklin represented the Brotherhood of Locomotive Engineers;

Mr. J. G. McLean the Brotherhood of Locomotive Firemen and Engineers; and

Mr. L. Dean the Brotherhood of Railway Telegraphers.

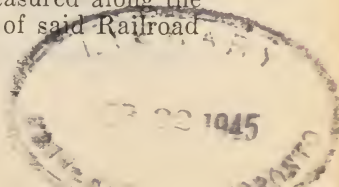
Heard at Sarnia, Ontario, June 28, 1945

JUDGMENT

CROSS, *Chief Commissioner*:

This is an application by New York Central Railroad Company, sub-lessee of the Canada Southern Railway, hereinafter called the New York Central, under Section 165A of the Railway Act, for an Order granting it leave to abandon the operation of the most westerly portion of its St. Clair Branch, being 15.91 miles in length, lying west of Petrolia Junction, more particularly described as follows:—

From a point four hundred thirteen (413) feet easterly, measured along the centre line of the main track of the St. Clair Branch, so-called of said Railroad



Company, from the centre line of side road between Lots nine (9) and ten (10), Concession Five, in the Township of Enniskillen, thence in a westerly direction through the Townships of Enniskillen and Moore, fifteen and ninety-one hundredths (15.91) miles to the Village of Courtright, said point of ending being one thousand one hundred and twenty-seven (1127) feet, more or less, northerly, measured along centre line of said main track from the centre line of River Road, so-called in the Village of Courtright; all of the segment being in the County of Lambton and Province of Ontario.

The County of Lambton, the Township of Enniskillen, the Township of Moore, the Township of Dawn, the Township of Brooke, the Village of Courtright and the Village of Brigden, unless otherwise stated, are hereinafter referred to jointly as the Municipalities; and Canada and Dominion Sugar Company Limited as the Sugar Company.

In accordance with its practice in abandonment cases, the Board caused an inspection of the portion of the railway line in question to be made by an engineer and an operating inspector of the Board, and we have before us their written reports.

The said St. Clair Branch was originally constructed by the Canada Southern Railway in the year 1873. It was operated by that company until January 1, 1883, when it was leased to the Michigan Central Railroad Company. This lease expired January 1, 1904, when a new lease to the Michigan Central Railroad Company for 999 years was entered into. On January 2, 1930, all property of the Michigan Central Railroad Company was leased to the New York Central for a term of 99 years, commencing February 1, 1930.

The St. Clair Branch of the New York Central extends from St. Clair Junction about four miles west of St. Thomas to Courtright, the western terminus of the branch, a distance of about 66.38 miles. The segment of the branch proposed for abandonment is the most westerly 15.91 miles of the said branch line.

At Courtright, Ontario, the western terminus of the said St. Clair Branch, or at Courtright Junction, there is provision for interchange of traffic between New York Central and Pere Marquette Railway Company. The Pere Marquette from Sarnia runs in a southerly direction along the St. Clair River, passes through Wallaceburg, Chatham, and Fargo, in the Province of Ontario. At Fargo it connects with the main line of New York Central where there is also provision for exchange of traffic between the two railways.

The Sugar Company has a sugar refinery located at both Wallaceburg and Chatham, on the line of Pere Marquette Railway Company, where it manufactures sugar from sugar beets exclusively. Further reference will be made to these sugar refineries later.

The present trains operated by New York Central on its St. Clair Branch, between St. Thomas and Courtright, consist of a mixed train service, with three round trips each week, as follows:—

- (a) Westbound, leaving St. Thomas 8.30 a.m., arriving Courtright 4.15 p.m. Mondays, Wednesdays and Fridays.
- (b) Eastbound, leaving Courtright at 9.30 a.m. and arriving St. Thomas 5.15 p.m. Tuesdays, Thursdays and Saturdays.

The above service is a reduction of the previous train service and was put into effect on or about November 17, 1940, under the authority of Board's Order No. 59765, dated October 15, 1940, made following a hearing of an application for the purpose, and for the reasons set out in the judgment of the Board in New York Central R.R. Co. vs. Alvinston et al, 52 C.R.C. 58.

The whole of the St. Clair Branch of railway runs through and serves a prosperous farming community.

There are four stations on the segment of the line of railway proposed for abandonment, namely, Brigden, Kimballs, Courtright Junction and Courtright

with the following approximate population: Bridgen 600, Kimballs 25 and Courtright 400.

The present state of maintenance of the tracks, bridges, culverts and buildings on the segment of the branch line of railway proposed for abandonment may be said to be fair. The annual amount spent on maintenance of the line in the last five years was as follows: In 1940 it was \$4,444.55; in 1941, \$5,675.30; in 1942, \$5,858.94; in 1943, \$12,775.07, and in 1944 \$8,635.33. The amount thus spent in these years was only sufficient to cover the bare necessities to keep the segment in a safe condition for operation, and considerably less than the officers of New York Central say is necessary to keep the segment in proper shape.

No mails are carried on the 15.91 miles of segment of the branch line.

The principal items of traffic carried on the line are wheat, coarse grains, flour, cattle, lumber, stone, broken, ground and crushed for road building, building cement, petroleum oils, fuel, road petroleum oils, lubricating oils and greases, sugar beets and a limited amount of general merchandise.

The total number of carloads, including L.C.L., of freight originating on and destined to points on the segment of the line, moved between points on the segment and points beyond it, terminated on the line and originated elsewhere, and freight neither originated at nor destined to points on the line (overhead or bridge traffic), for the period of the last five years was as follows:—

Years	1940	1941	1942	1943	1944
Carloads	468	497	960	762	711

Of the above number of carloads of freight, the following numbers of carloads were what is known as overhead or bridge traffic, that is, freight which was carried over the segment of line, but which neither originated on or was destined to points on the segment:—

Years	1940	1941	1942	1943	1944
Carloads	330	350	359	216	508

Of a total of 3,398 carloads of freight moving on the line in the five-year period, 1,763 carloads, or a little over fifty per cent, was overhead or bridge traffic.

New York Central, the Applicant, in its statements of operating and other income, and of operating and other expenses, has included in its expenses, Railway Tax Accruals, Hire of Freight Cars and Interest at three per cent on net salvage (exclusive of Right-of-Way) if the line be abandoned. It has not been the practice of the Board to allow such items in considering the financial situation of the line of railway in abandonment applications. I do not think that interest on the estimated net salvage can be regarded as a proper item of expense. As to taxes, these are probably on real estate of the Applicant, and it is not shown that it would be relieved of this item of expense should the application be granted.

A recast of the financial data put in by New York Central has been made to bring it into line with the practice of the Board, in cases such as the present. And on this basis the total revenue would be as follows:—

1940	\$16,589
1941	12,508
1942	40,698
1943	35,652
1944	20,503

Operating expenses would be as follows:—

1940	\$18,943
1941	18,513
1942	33,524
1943	38,703
1944	26,697

The system profit or loss is therefore as follows:—

1940	\$2,354 Loss
1941	6,005 Loss
1942	7,174 Profit
1943	3,051 Loss
1944	6,194 Loss

From the foregoing it will be noted that the net loss of New York Central in out-of-pocket expenses, calculated on the practice of the Board, for the five-year period 1940 to 1944 inclusive is \$10,430, or an average of a little over \$2,000 per year.

The segment profit or loss on the method followed by New York Central, in preparation of its statements, on the other hand, is as follows:—

1940	\$5,808 Loss
1941	9,511 Loss
1942	3,230 Profit
1943	7,807 Loss
1944	10,665 Loss

The increase in traffic in 1942, and the resultant increase in revenue, was occasioned by substantial shipments on the line of crushed stone and other high-way building material. This, New York Central contends is non-recurring traffic, and should, therefore, be largely disregarded, in the consideration of its application.

The economics of this proposed abandonment are somewhat different from any previous application which has come before the Board in recent years. First of all, the traffic originating and terminating on the segment of the line proposed to be abandoned, except for the year 1942, is very small, both from the point of view of New York Central and the municipalities located along the line. The important feature is the bridge or overhead traffic which in normal times supplies a very large proportion of the revenue to the St. Clair Branch.

It is proposed to reroute this traffic, if the application is granted, via Fargo, Ontario, a junction or transfer point with Pere Marquette Railway Company, on the main line of New York Central previously referred to. The rerouting of this traffic will undoubtedly provide additional revenue to the New York Central, unless further inroads are made by highway competition transport services. Assuming, however, that the traffic handled from 1940 to 1944 were rerouted according to the suggestion of the Applicant Company, it is of interest to note that the loaded freight car miles would be increased practically one hundred per cent. There would, of course, also be substantial increase in operation and other cost of handling the traffic due to the longer haul.

Pursuant to an earlier request from the Board, New York Central put in evidence at the hearing statements showing the estimated operating results in the event of the abandonment of the segment, compared with the actual operating result. These statements are for the calendar year 1944. And the comparisons are made on the assumption that New York Central retained in the first year after abandonment the same amount of traffic as moved in the year 1944 over the segment. It must, of course, be purely conjectural what amount of traffic would actually move on the rerouting via Fargo. The calculations are also dependent upon New York Central being able to make arrangements with Pere Marquette Railway Company for a redivision of the rates on the existing basis, but having regard to the change in the proportionate distance of haul by each of the railways.

In such case, if the traffic is rerouted via Fargo instead of via Courtright as at present, New York Central would get a higher proportion of the rate than at present because it would have more of the haul on its own lines.

According to the calculations of New York Central, and on the hypothetical basis that the same volume of traffic that moved via Courtright in 1944 would move via Fargo, the result of the abandonment of the segment according to the method of calculation adopted by New York Central, would be to change the deficit in 1944 of \$10,665.19 to a profit of \$11,451 on the basis of the present rates, or to a profit of \$12,969.95 on the basis of possible freight rates due to increase in the mileage of the haul.

It is stated on behalf of New York Central that if the application is allowed the company plans to put into effect a daily except Sunday train service on the balance of the St. Clair Branch from St. Thomas to Petrolia. That is a train each way per day instead of the tri-weekly service as at present.

The chief alternative method of transportation available to the people served by the segment, in the event that abandonment is allowed, is road and highway transport. The area affected is fairly well served by roads and highways, and there appears to be available a reasonable number of carriers by highway engaged in that form of transport for hire. A certain number in Courtright and vicinity would have rail transport available on the Pere Marquette at that point. Others in the area of the eastern portion of the segment could use Oil City on the St. Clair Branch.

The number of passengers carried on the segment of the line of railway and the revenue derived from that source is so small that it need scarcely be mentioned.

The branch line in question, like most other branch lines of railway, has for many years suffered through the loss of traffic to motor vehicle highway carriers and the use of privately-owned motor vehicles. At one time the branch enjoyed quite a substantial amount of traffic in the carriage of cattle. This has largely gone to the truckers. So far as Brigden and the surrounding area is concerned, it is claimed that the change in method of shipment of cattle was occasioned by the inconvenient hour of arrival of the trains at that point.

The most important place on the segment is Brigden with a population of about six hundred. In addition to the usual business establishments common to such a village, there is located in Brigden a flour mill owned and operated by Dean Milling Company with a capacity of two hundred barrels per day of twenty-four hours operation. This milling company is presently chiefly engaged in making flour for export to Great Britain and the West Indies. It also deals in barley and oats which is resold to farmers in the community. Most of the wheat and other grains are brought in to Brigden from Sarnia to Courtright on the Pere Marquette and from Courtright to Brigden over the New York Central segment. There is no doubt that this milling company would be seriously prejudiced in its business if the segment of line is allowed to be abandoned. Other businesses in Brigden would also be prejudiced to a degree.

One of the strongest objections to the application comes from farmers and others who are engaged in or interested in the beet-growing industry and who ship their beets from points on the remaining portion of the St. Clair Branch such as Inwood, Weidman, Holmesdale, Oil City, Petrolia, Walker's and Fairbanks. No sugar beets are shipped from points on the segment proposed for abandonment.

These growers of beets, in so far as they ship their products by rail, ship to the sugar factories of the Sugar Company at Wallaceburg or Chatham, over the

St. Clair Branch line of New York Central via Courtright and from there over the line of Pere Marquette Railway Company on which the said sugar factories are located.

If the interchange with Pere Marquette Railway at Courtright is lost, sugar beets which originate east of Petrolia Junction would have to be moved down the St. Clair Branch of New York Central to St. Thomas, then on the main line of New York Central to Fargo and from Fargo via Pere Marquette to a sugar refinery at Chatham or Wallaceburg. On account of the longer haul, it is estimated that the present freight rate on the sugar beets would be increased by approximately fifty-five cents per ton. This would be an added expense which must ultimately be borne by the grower.

The objection of the farmers who grow sugar beets, and others interested in the development of the sugar beet industry, including the Sugar Company, is solely on the ground of the increase in the freight rates for carriage by rail, if the segment is abandoned.

According to a statement put in evidence by an officer of the Sugar Company the number of farmers engaged in the growing of sugar beets in 1945, in the area affected is 144. The area planted to sugar beets for the same year is 775 acres and the estimated tonnage 7,750 as against 4,683 tons said to have been grown in the same district in 1944. This shows a substantial increase over the year 1944. The estimate is based on an average of ten tons per acre, which, I think, is a fair estimate and is based on the long-term average.

The number of cars of sugar beets shipped over the segment in 1944 was 151 and the number of tons 4,682.

The only market for the sugar beets is at the sugar factories of the Sugar Company at Chatham or Wallaceburg. An increase of fifty-five cents per ton in freight charges would mean an increased cost to the growers, on an average, of about \$5.50 per acre. On the evidence placed before us this added expense would be more than the industry could economically bear. Some of the witnesses go as far as to say that it would put the growing of sugar beets "out of business" in the area.

The question of delivery of the sugar beets to the sugar factories by means of motor trucks operating on the highways was fully discussed. From the evidence on this point it appears that this form of carriage is uneconomical beyond a distance of about twenty miles. The problem, therefore, could not be satisfactorily met in this way.

From all that has just been placed before us, I must find that the abandonment of the segment of the line as proposed would result in serious loss and disadvantage to the growers of the sugar beets, and loss and disadvantage to the Sugar Company as well.

There is, I think, good promise for an increase in the growing of sugar beets in the area affected, if the present form of rail transportation remains available.

There is another ground of objection on the part of the municipalities which deserves consideration. The County of Lambton and some of the township municipalities have made plans for programs of postwar work upon their highways, roads and bridges. These comprise the reconstruction and improvement of a number of highways and roads and the repair and reconstruction of a number of bridges. The total estimated expenditure of the County of Lambton on these proposed postwar works over a period of five years is approximately \$1,300,000 for the whole county. Of this total sum it is estimated that about \$175,000 would be expended during the five-year period in the area served by the segment of the line with which we are here more directly concerned. The Township Municipalities served by the segment of the line also contemplate the expenditure of considerable sums upon their roads and bridges over the next few years.

All of these proposed postwar works will, if carried out, involve the movement of a large quantity of crushed stone and other road construction material over or on the segment of the line, a considerable amount of which must be brought in from without the area. If the segment is removed additional cost for trucking the materials will have to be paid by the County and Township Municipalities.

These proposed programs of road construction and improvement, if put into effect, would undoubtedly bring additional freight traffic and added revenue to New York Central. The result of this form of traffic is apparent from the operating results of the railroad in the year 1942, to which reference was made earlier.

It is, however, quite true that the carriage of highway and road construction material is not a class of traffic which can be expected to recur constantly from year to year over a long period of time. It may, nevertheless, prove to be helpful during the next few years.

There is a further matter which I think may be mentioned. This country has just been through a period of several years of war. Due to circumstances created by the war, business, including the business of agriculture, has, during the greater portion of the five year period under review, been carried on under unusual and abnormal conditions. In my view the present is not, therefore, perhaps the most opportune time to determine the fate for the future of the most westerly 15.91 miles of the St. Clair Branch of New York Central.

The Board has held on other occasion that the mere fact that a branch line of railway has ceased to show a profit from operation does not, in every case, justify its abandonment. The Board has generally applied, in abandonment cases, the test which was laid down in *C.N.R. vs. Tweed*, 44 C.R.C. 53 at p. 58, where it is stated:—

“The issue is clearly, however, whether the loss and inconvenience to the public consequent upon the abandonment outweighs the burden that continued operation of the railway line involved would impose upon the railway company.”

It is shown that the line in question has during the past five years been operated at a loss. The loss, however, based upon the straight out-of-pocket method of calculation is not very serious. I have also kept in mind the other financial benefits earlier referred to, that might accrue to New York Central from the granting of the application. The loss and inconvenience that would likely be occasioned to the public if the operation of the segment of the line is abandoned, have also been somewhat fully reviewed.

Upon consideration of all that has been placed before us, and having regard to all the circumstances and conditions present here, I think that the application should be refused.

I wish, however, to add a further word. When the operation of a line of railway is abandoned and the rails taken up that is the end of the railway. On the other hand, under changed conditions, or in the event that losses of operation continue to be or become serious, the railway can always apply again, and I think that it should be understood that New York Central has such a right. This is a circumstance which, I suggest, the public concerned might do well to take into further account. In the meantime, the segment of the St. Clair Branch will have a further opportunity to prove its worth and continued necessity.

The application will, therefore, be dismissed. Order to issue accordingly.

Ottawa, August 17, 1945.

J. A. CROSS

I concur,

A. SYLVESTRE,
J. A. STONEMAN.

ORDER No. 66390

In the matter of the application of the New York Central Railroad Company, sub-lessee of the Canada Southern Railway, hereinafter called the "Applicant Company", for an Order of the Board pursuant to Section 165A of the Railway Act granting it leave to abandon the operation of that most westerly portion of its St. Clair Branch between Petrolia Junction and the Village of Courtright, in the Province of Ontario, a distance of 15.91 miles.

File No. 40892.2

TUESDAY, the 21st day of August, A.D. 1945.

J. A. CROSS, K.C., *Chief Commissioner.*

A. SYLVESTRE, K.C., *Deputy Chief Commissioner.*

J. A. STONEMAN, *Commissioner.*

Upon hearing the application at the sittings of the Board held in Sarnia, Ontario, June 28, 1945, in the presence of Counsel for the Applicant Company, the County of Lambton, the Township of Enniskillen, the Township of Moore, the Township of Dawn, the Township of Brooke, the Village of Courtright and the Village of Brigden, the Canadian and Dominion Sugar Company, Limited, the Brotherhood of Locomotive Engineers, the Brotherhood of Locomotive Firemen and Enginemen and the Brotherhood of Railway Telegraphers, and what was alleged; and upon the written submissions filed—

It is ordered: That the application be, and it is hereby, dismissed.

J. A. CROSS,

Chief Commissioner.

ACCIDENTS REPORTED TO THE OPERATING DEPARTMENT

BOARD OF TRANSPORT COMMISSIONERS FOR CANADA, JULY, 1945

Railway Accidents	209 with 20 killed and 231 injured
Level Crossing Accidents.....	32 with 12 killed and 75 injured

	Killed	Injured
Passengers	—	59
Employees	6	156
Others	26	91
Totals	32	306

DETAILS OF ACCIDENTS AT HIGHWAY CROSSINGS

NOVA SCOTIA

Accidents	K.	I.	
1	1	5	Automobile drove onto crossing in front of approaching train and was struck. Licence NS.30509.

NEW BRUNSWICK

1	—	1	Auto Truck drove onto crossing in front of approaching train and was struck. Licence NB.C-1590.
1	1	3	Automobile drove onto crossing in front of approaching train and was struck. Licence NB.11226.

QUEBEC

1	3	6	Tramway Bus struck by train. Licence Que.A-566.
1	—	7	Automobile drove onto crossing in front of approaching train and was struck. Licence Que.25461.
1	—	1	Automobile drove onto crossing in front of approaching train and was struck. Licence Que.18579.
1	1	—	Pedestrian walked over crossing and was struck by train.
1	—	1	Auto Truck drove onto crossing in front of approaching train and was struck. Licence Que.F-24253.
1	—	1	Automobile struck by Electric Car. Licence Que.NH-9641.

ONTARIO

1	1	—	Pedestrian walked over crossing and was struck by train.
1	—	1	Automobile drove onto crossing in front of approaching train and was struck. Licence Ont.90-M-20.
1	1	1	Auto Truck drove into crossing in front of approaching train and was struck. Licence Ont.C-23723.
1	—	5	Automobile stalled on crossing and was struck by Rail Motor Car. Licence not given.
1	—	22	Auto Bus drove onto crossing in front of approaching train and was struck. Bus. No. 73.
1	—	1	Automobile ran into side of train. Licence Ont.13-M-67.
1	1	1	Automobile drove onto crossing in front of approaching train and was struck. Licence Ont.Y-8052.
1	—	1	Auto Truck drove onto crossing in front of approaching train and was struck. Licence Ont.76844-C.
1	—	1	Horse ran into side of train.
1	—	5	Automobile ran into side of train. Licence Ont.5-P-262.
1	—	2	Automobile ran into side of train. Licence Ont.2-Z-629.
1	—	1	Automobile ran into side of train. Licence Ont.3-Y-77.
1	—	1	Auto Truck drove onto crossing in front of approaching train and was struck. Licence Ont.C-61038.

DETAILS OF ACCIDENTS AT HIGHWAY CROSSINGS—*Concluded*

MANITOBA

Accidents	K.	I.	
1	1	—	Automobile drove onto crossing in front of approaching train and was struck. Licence Man.78090.
1	—	1	Automobile ran into side of train. Licence Man.2-8-02.
1	—	1	Auto Truck ran into side of train. Licence Man.6976.

SASKATCHEWAN

1	—	1	Auto Truck drove onto crossing in front of approaching train and was struck. Licence not given.
1	—	1	Street Car proceeded onto crossing and was struck by yard engine.
1	—	2	Track Motor Car struck by automobile. Licence Sask.33172.
1	—	1	Automobile ran into side of train. Licence Alta.57802.

ALBERTA

1	1	—	Automobile drove onto crossing in front of approaching train and was struck. Licence Alta.12210.
1	1	—	Auto Truck drove onto crossing in front of approaching train and was struck. Licence Alta.32-474.

BRITISH COLUMBIA

1	—	1	Automobile ran into side of train. Licence not given.
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Of the 32 accidents at Highway Crossings, 26 occurred at Unprotected Crossings and 6 at Protected Crossings. Twenty-two of the accidents occurred after Sunrise and Ten after Sunset.

September 5, 1945.

SUMMARY OF ORDERS ISSUED BY THE BOARD

- 66368 Aug. 14—Approving location of pipe lines, etc., of Manitoba Co-operative Wholesale, Limited, near C.N.R. tracks at Swan River, Man.
- 66369 Aug. 14—Approving location of pipe lines, etc., of Imperial Oil Ltd. near C.P.R. at Macleod, Alta.
- 66370 Aug. 14—Approving location of pipe lines, etc., of Imperial Oil Ltd. near C.P.R. at Nakusp, B.C.
- 66371 Aug. 14—Approving under Maritime Freight Rates Act tolls published in tariffs filed by the C.N.R. under Sec. 3.
- 66372 Aug. 14—Approving under Maritime Freight Rates Act tolls published in tariffs filed by C.P.R. under Sec. 9.
- 66373 Aug. 14—Extending time within which C.N.R. is required to install protection at crossing of St. Athanase highway, first east of St. Pascal Station, Que.
- 66374 Aug. 16—Declaring C.P.R. crossing of Cathcart Street, Sault Ste. Marie, Ont. protected to Board's satisfaction; present speed limitation of ten miles an hour to be maintained.
- 66375 Aug. 16—Authorizing the C.N.R. to operate bridge across the Godfrey River at mileage 32.4 Aston Subd., P.Q.
- 66376 Aug. 16—Authorizing C.P.R. to construct branch line of railway commencing at Mile 59.73 Stirling Subd., near Conrad, Alta.
- 66377 Aug. 17—Declaring C.P.R. crossing of highway first west of Arthur Station, Ont. protected to Board's satisfaction.
- 66378 Aug. 17—Approving plan showing changes at crossing of C.P. and C.N.Rys. at mileage 10.96 Cromer Subd. of C.N.R. near Villette, Man.
- 66379 Aug. 17—Declaring C.P.R. crossing of highway at St. James, Man. protected to Board's satisfaction.
- 66380 Aug. 18—Authorizing C.P.R. to operate its trains through interlocking plant at crossing of its railway by the New York Central Railroad near Appin, Ont.
- 66381 Aug. 17—Approving location of pipe lines, etc., of Letellier Consumers Co-Operative, Ltd. near C.N.R. tracks at Letellier, Man.
- 66382 Aug. 18—Approving location of pipe line, etc., of Imperial Oil Limited near C.P.R. at McCord, Sask.
- 66383 Aug. 18—Approving location of pipe line, etc., of North Star Oil Limited near C.N.R. tracks at Chauvin, Alta.
- 66384 Aug. 20—Declaring C.P.R. crossing of highway first immediately west of Milton, Ont. protected to Board's satisfaction.
- 66385 Aug. 20—Approving under Maritime Freight Rates Act tolls published in tariffs filed by Canadian Freight Association under Sec. 3.
- 66386 Aug. 20—Approving location of pipe lines, etc., of Preeceville Farmers' Co-Operative Association near C.N.R. tracks at Preeceville, Sask.
- 66387 Aug. 20—Authorizing C.N.R. and C.P.R. to operate their trains through interlocking plant at Glencoe, Ont.
- 66388 Aug. 22—Declaring C.P.R. crossing of highway first immediately east of Bourget Station, Ont. protected to Board's satisfaction.
- 66389 Aug. 21—Declaring C.P.R. crossing of highway first immediately west of Tompkins Station, Sask. protected to Board's satisfaction.
- 66390 Aug. 21—Dismissing application of New York Central Railroad for Order granting it leave to abandon operation of most westerly portion of its St. Clair Branch between Petrolia Junction and Village of Courtright, Ont.
- 66391 Aug. 22—Approving under Maritime Freight Rates Act tolls published in tariffs filed by C.N.R. under Sec. 3.
- 66392 Aug. 31—Authorizing C.N.R. to use and operate bridge across Pickerel River at mileage 68.3 Sudbury Subd., Ont.
- 66393 Aug. 21—Approving location of C.N.R. portable shelter at Chateau d'Eau, mile 8.8 Batiscan Subd., Que.
- 66394 Aug. 21—Authorizing C.N.R. to relocate their trackage situated on Lot 455 in Town and County of Iberville, Que.
- 66395 Aug. 22—Declaring C.P.R. crossing of highway one and one-half mile south of Midnapore, Alta. protected to Board's satisfaction.
- 66396 Aug. 22—Declaring C.N.R. crossing of highway first immediately west of station at Gilbert Plains, Man. protected to Board's satisfaction.

- 66397 Aug. 22—Authorizing C.P.R. to construct branch line of railway with extension thereof to serve Western Ventures Ltd. at mileage 77·17 Taber Subd., Alta.
- 66398 Aug. 23—Approving location of pipe line, etc., of McColl-Frontenac Oil Company near Michigan Central Railway at Leamington, Ont.
- 66399 Aug. 22—Authorizing C.N.R. to construct additional track across Regent Street, City of Fredericton, N.B.
- 66400 Aug. 22—Declaring C.P.R. crossing of highway in City of Calgary, Alta. protected to Board's satisfaction.
- 66401 Aug. 25—Authorizing C.N.R. to construct their railway upon and along Bridge Street, St. Lambert, Que., to serve Asbestonos Corporation Limited.
- 66402 Aug. 23—Approving location of pipe lines, etc., of Gas and Oil Products Limited near C.P.R. tracks at Cremona, Alta.
- 66403 Aug. 23—Declaring C.P.R. crossing of highway first immediately west of station at Brandon, Man. protected to Board's satisfaction.
- 66404 Aug. 24—Authorizing C.N.R. to install interlocking plant at crossing of its tracks with the Chaudiere Valley Railway, at Joffre, Que., Diamond Subd.
- 66405 Aug. 28—Authorizing The Toronto, Hamilton & Buffalo Railway Co. to construct branch line of railway or spur to serve Ralston Purina Company, Ltd., Twp. of South Grimsby, County of Lincoln, Ont.
- 66406 Aug. 25—Declaring C.N.R. crossing of West Street, City of Simcoe, Ont. protected to Board's satisfaction; present speed limitation of ten miles an hour to be maintained.
- 66407 Aug. 27—Approving changes to interlocking plant at crossing of C.P.R. and the Pere Marquette Railway Co. at Chatham, Ont.
- 66408 Aug. 27—Approving relocation of pipe lines, etc., of McColl-Frontenac Oil Co. Limited near C.P.R. tracks at Swift Current, Sask.
- 66409 Aug. 27—Approving location of pipe lines, etc., of Meacham Co-operative Association Limited near C.N.R. tracks at Meacham, Sask.
- 66410 Aug. 27—Approving abandonment of operation of Great Northern Railway Co's branch line of railway serving Pacific Veneer Company Limited in City of New Westminster, B.C.
- 66411 Aug. 27—Extending time within which C.N.R. were required to install protection at crossing of Haig Boulevard in Twp. of Toronto, Ont.
- 66412 Aug. 27—Declaring C.P.R. crossing of Eighth Street second crossing west of station at Portage la Prairie, Man. protected to Board's satisfaction.
- 66413 Aug. 27—Approving clearances at siding serving Viau Limited, Parish of Longue Pointe, Que. (C.N.R.)
- 66414 Aug. 27—Declaring C.N.R. crossing of King William Street in City of Hamilton, Ont. protected to Board's satisfaction; present speed limitation of ten miles an hour to be maintained.
- 66415 Aug. 27—Authorizing C.N.R. to operate their passenger trains over crossing with C.P.R. at Canpa, Ont.

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The Board of Transport Commissioners for Canada

Judgments, Orders, Regulations and Rulings

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Application of the Commodity Prices Stabilization Corporation Limited, Ottawa, Ont., for interpretation of Rule 8 of the Canadian Car Demurrage Rules with respect to demurrage for delay which takes place while cars containing peanuts are being fumigated.

File—1700.430

Mr. R. FORSYTH, K.C. and Mr. ORIAN E. B. Low appeared for the Commodity Prices Stabilization Corporation Limited.

Mr. F. C. S. EVANS, Mr. A. K. DYSART and Mr. W. J. COLLINS appeared for the Canadian Car Demurrage Bureau.

JUDGMENT

WARDROPE, *Assistant Chief Commissioner*:

Written submissions were filed by the Applicant and the Canadian Car Demurrage Bureau in reply thereto, and the matter was then listed for hearing at a sittings of the Board in Ottawa on July 19th, 1945, in order that it might be more fully developed and additional representations received from the Applicant and the Demurrage Bureau.

The facts in this case may be summarized as follows:—

Under the Destructive Insect and Pest Act, Chap. 47 R.S. 1927, and regulations made pursuant thereto, administered by the Department of Agriculture, no plant infested with any pest or disease shall be admitted into Canada except under certain prescribed conditions. The Act defines the term plant as including all members of the vegetable kingdom and any part or product of a plant. Inspectors are appointed for carrying out the provisions of the Act and regulations thereunder. If upon inspection any plant is found to be infested with any pest or disease, an inspector shall give such instructions as may be necessary for the treatment or destruction of any plant and such instructions shall be carried out by the owner or lessee of the infected plant and such remedial treatment shall be carried out and continued until the insect, pest or disease shall be deemed by the inspector to have been exterminated.

The Commodity Prices Stabilization Corporation Limited is a Crown Company. One of its functions is to assist the maintenance of the price ceiling by purchasing goods and reselling them. One of the commodities so purchased is peanuts which have been shipped to Canada in substantial quantities. Large quantities of these peanuts arrive in Canada in an insect infested condition. Disinfestation is carried out through fumigation. The evidence given related to importation through Montreal although there was also importation through other ports. It is stated that prior to three years ago there was no fumigation in railway cars and it was not known whether it could be done in cars. Fumigation carried out before that was done at the Montreal fumigation station or at destination in the premises of the importer. Within the last three years through the development of methyl bromide fumigant, which is the most effective and readily applied of any to date, it was found that the most efficient and practical manner in which to carry out this disinfestation is through fumigation in suitable railway cars and that practice has been followed, it being also stated there were no suitable warehouse facilities at Montreal to enable fumigation therein of the volume of peanuts received in numerous cargoes. Upon arrival of the vessel at Montreal with peanuts, inspectors of the Department of Agriculture make an examination of them on the boat. When found infested they notify the importer that the peanuts cannot be admitted into Canada until they are fumigated. Thereupon, arrangements are made to have the railway furnish suitable steel cars (wooden cars being found unsatisfactory) in which the peanuts are loaded. It is then necessary for the railway to move the cars from the dock to some quite distant and comparatively isolated point and put them on special tracks so that the fumigant can be released without injury to persons in the vicinity. Upon notification that the peanuts are infested and fumigation is required before they can be admitted into Canada, it becomes the duty of the importer to immediately secure the services of a qualified fumigating concern to perform the work. The importer engages the fumigating concern and pays the cost of fumigation. After fumigation the inspectors go into the car to examine the results. If the fumigation has effected a kill, they release the car for transportation to destination. If they find any living insects the fumigating concern must do it all over again.

The Demurrage Bureau stated that fumigation can be performed on an individual car within twenty-four hours and such time is available to the importer inasmuch as the shipments arrive in bond and are, therefore, entitled to twenty-four hours free time for entering at Customs. The demurrage charges involved were assessed for the delay to cars following the first twenty-four hours after placing on tracks where fumigated until the date released by the inspector. Applicant admits the statement concerning fumigation within twenty-four hours but alleges that this is the minimum time under ideal conditions for one individual car; that the work cannot be carried out under adverse weather conditions and only a limited number of qualified fumigators are available. There is no specific information on the record concerning the delay beyond twenty-four hours. In a letter, dated June 26, 1945, from Mr. W. St. G. Ryan, Inspector in Charge at Montreal, to Mr. W. N. Keenan, Chief, Plant Protection Division, Department of Agriculture, Ottawa, it is stated:—

"The inspectors worked Saturday afternoons and when necessary on Sundays, so as to keep up with the fumigators. I can confidently state that no car was delayed on our account.

The fumigators might cause the delay of the release of cars by not having a sufficient supply of fumigants on hand, or by not providing enough men for the work to be undertaken.

Four different pest control operators did the fumigation. One firm tried fumigating with Proxate and was held up for his supply of fumigant.

which caused delay and gave us a lot of extra running to and from Southwark, which is about six miles from our office. I think a great deal of delay could be avoided if the fumigation were done by one reliable firm who would be willing to provide sufficient men for the work to be undertaken."

Applicant contends the demurrage charges in question were improper under Rule 8 of the Canadian Car Demurrage Rules which reads as follows:—

"Rule 8.—Customs or Inspection Delays

Demurrage shall not be collected from the consignee for any delays for which Government or railway officials may be responsible."

As I understand the submission of counsel for the Applicant, it is contended that if, as a result of a Government regulation, an inspector acting thereunder requires fumigation to be made then the delay involved through fumigation under and pursuant to such regulation is a delay for which a Government official is responsible. The following extract from P.1278-9 of the record is here relevant:—

"If it is capable of the interpretation that, under and pursuant to government regulations, an official of the government caused this delay in order to accomplish the purpose of that regulation, then I am entitled to assume the consignee comes under the protection of Rule No. 8 because I am entitled to the benefit of the doubt. Even though the rule may be capable of either interpretation, it is capable of that interpretation and, if I am entitled to the benefit of the doubt, I am entitled to that benefit. That is the position I take in the matter, Mr. Chairman, and I do not know that I need to labour the point any further.

The CHIEF COMMISSIONER: Getting back to the point I made a while ago, your contention is that, even during the period the peanuts were being fumigated, that is really an act of a government official of the Department of Agriculture and that, consequently, the delay of fumigation is caused by the act of the government Department of Agriculture official in the performance of his duties, pursuant to the Act mentioned and the regulations made under it.

Mr. FORSYTH: That is right, and it is capable of that interpretation. As I am entitled to the benefit of the doubt, I am entitled to protection under that rule; that is my point, Mr. Chairman."

He claimed his contention is supported by the Board's Judgment in complaint of the Canada Seed Company, Toronto, Volume 10, Board's J.O.R. and R., P. 132.

Counsel for the Demurrage Bureau submitted that the things which were present in the Seed case were not present in this case because here the inspection, which was equivalent to the inspection in the Seed case, took place before the goods ever got into the cars. The fumigation required as a result of such inspection had to be done by the importer and was performed by concerns employed by and paid by the importer and did not require further inspection on the part of a Government official until it had been performed. He also referred to the statement of the Inspector in Charge at Montreal that "I can confidently state that no car was delayed on our account". He contended that there was here no delay for which Government officials were responsible; it was caused by the condition of the goods; there was no requirement on the part of the inspector that the goods must be fumigated in railway cars; that the importer was notified that the goods could not be imported until fumigated and chose the railway cars as a means of fumigation.

There are numerous Government regulations with respect to the importation and exportation of goods and prescribed forms to be prepared by shippers and presented to the Customs Officers. Then, there are in addition special Government requirements governing importation and exportation such as the inspection and quarantine of animals imported into Canada, the inspection of animals exported from Canada, importation of foreign wool, hair, hides, skins, bones, etc.; and the commodities covered by the Destructive Insect and Pest Act. The shipper is charged with the responsibility for knowledge of these regulations and fulfilling them, and for any delay which takes place in doing so. As stated by the Board in application of Western Canada Flour Mills Company, Ltd., Calgary, Alta., for a Ruling of the Board concerning demurrage charged against two cars of Oat Middlings held at Cantic, Que., by the Canadian National Railways awaiting Export Entries, Vol. 26, J.O.R. and R., P.389:—

“While, when customs requirements are fully understood and promptly complied with and the necessary documents submitted, there is no delay in arranging clearance from customs, at the same time, in practice, it frequently happens that there is delay through non-compliance promptly with customs requirements, or absence of some of the necessary documents, which involves delay to cars and, consequently, assessment of demurrage. The obligation to fulfil customs requirements and present the necessary documents rests solely upon the owner of the goods; this is not an obligation which, in any way, devolves upon the railway company.”

In this case it was within the knowledge of the importer that peanuts could not be admitted into Canada in an infested condition; that if infested, disinfestation had to be carried out by the owner and such remedial treatment carried out until the insect, pest or disease shall be deemed by the inspector to have been exterminated which, in this case, was by means of fumigation. Government officials are not responsible for the infested condition of these peanuts or the delay through fumigation resulting therefrom. If the Government officials had not promptly made an inspection on the vessel, this would be delay for which Government officials are responsible but, of course, has no relevancy to what is here involved as the peanuts were not then in the railway cars. If after fumigation in railway cars there had been delay on the part of an inspector in examining the results, such delay between completion of fumigation and the inspector's examination would be a delay for which Government officials are responsible under the provisions of Demurrage Rule 8. From the time the inspector directed fumigation until fumigation was completed responsibility for this work was that of the importer. While it appears that the inspectors were around during the work of fumigation and inspecting and releasing the cars from time to time as soon as fumigation was completed, their presence or assistance during fumigation does not, in my opinion, in any way detract from the obligation being upon the importer to have the fumigation performed and for any delay with respect thereto.

I consider the facts in this case clearly distinguishable from those of the Canada Seed Case *supra*. In the seed case the car was detained while samples of the seed therein were sent to the Canadian Government Seed Laboratory for analysis and testing as to purity. From the time of drawing the samples until the Collector of Customs at Brantford was instructed that the shipment could be released, the delay was clearly that of Government officials; there was no action which could be or was required to be taken by the consignee during this interval. Here the fumigation was the responsibility of the importer and required to be performed by him and at his expense, and for any delay in doing so no Government or railway officials were responsible nor were they responsible for the condition of the peanuts which necessitated such action.

I, therefore, find that the provisions of Demurrage Rule 8 do not provide for non-collection of the demurrage charges assessed for the delay which took place while these cars of peanuts were being fumigated.

Ottawa, August 28th, 1945.

HUGH WARDROPE.

I concur

J. A. CROSS

J. A. STONEMAN.

In the matter of the application of The Bell Telephone Company of Canada for an Order under Section 373 (3) and all other relevant sections of the Railway Act, for leave to exercise its statutory powers to construct, erect and maintain its line or lines of telephone along, across and under certain highways or road allowances in the Township of London, in the County of Middlesex and Province of Ontario;

And in the matter of Board's Order No. 66277, dated July 23rd, 1945, made pursuant to the said application;

And in the matter of the application of the Township of London to vary or amend the said order;

And consideration of all questions relating to terms and conditions in respect to the said application and the works by the said Order authorized.

File No. 44484.1

N. A. MUNNOCH, K.C., and F. A. BURGESS, for The Bell Telephone Company,

A. R. DOUGLAS, K.C., for The Township of London.

Heard at London, Ont.,

AUGUST 30 and 31, 1945.

ORAL JUDGMENT

Cross, *Chief Commissioner*: The Bell Telephone Company of Canada, Applicant, and the Township of London, in the County of Middlesex, Ontario, Respondent. Mr. N. A. Munnoch, K.C., and Colonel F. A. Burgess, O.B.E., appeared for the Bell Telephone Company of Canada, and Mr. A. R. Douglas, K.C., for the Township of London. Heard at the City of London, in the Province of Ontario, on August 30th and 31st, 1945.

This matter arose by way of an application of the Bell Telephone Company of Canada for an order under Section 373 (3) and all other relevant sections of the Railway Act for leave to exercise its statutory powers to construct, erect and maintain its line or lines of telephone along, across and under certain public highways or road allowances within the corporate limits and under the jurisdiction of the Township of London in the County of Middlesex, Province of Ontario, in the manner, to the extent and in the location set out in the application dated July 19, 1945.

In order to meet the present demands for additional telephone service the applicant was and is in the process of constructing additional long distance telephone toll lines from the City of London in the County of Middlesex to the City of Windsor in the County of Essex, Province of Ontario, connecting at its Windsor terminus with lines extending to Detroit, Chicago and other large industrial western United States centres and at its London terminus with

lines extending to Toronto, Ottawa, Montreal and other large industrial eastern Canadian and United States centres and connecting with and serving for long distance purposes, all intermediate municipalities through or near which the said lines would pass.

The applicant was unable to obtain the consent of the Township in respect to its proposed lines or, in any event, it was unable to obtain such consent otherwise than subject to terms and conditions not acceptable to the applicant company; the present application is accordingly made to the Board.

From the application and the material filed with the Board in support of the application, it appeared to the Board that the only matter in dispute between the applicant and the Township was the question as to what terms and conditions, if any, should be imposed upon the applicant and, it appearing to the Board that the construction of the telephone line or lines (buried cable) should be proceeded with, the Board made an ex parte order, No. 66277, dated July 23, 1945, authorizing the applicant to construct, erect and maintain its line or lines of telephone along, across and under certain highways or road allowances in the Township of London, in the County of Middlesex, Province of Ontario, as described in the application and specified in the Order.

By paragraph 2 of the said Order No. 66277, the Board provides:—

“That all questions relating to terms and conditions in respect to this application and the works hereby authorized, be and they are hereby, reserved for further consideration and order by the Board.”

The Township later, by its answer to the application, raised certain objections to the location of the line or lines of telephone as authorized by said Order No. 66277, dated July 23, 1945, and more particularly in respect to the underground conduit and associate manholes, cables and equipment, along and under the road between concessions 1 and 2, (Oxford Street), from the westerly municipal limits of the City of London to the road in Lot 21 of the Township, and accordingly asked that the said order be varied or amended in certain respects.

In view of the position taken by the Township as set out in its answer, the Board decided to put the matters involved down for a public hearing at this present sitting of the Board in the City of London, Ontario.

There are two questions for consideration:—

- (1) Should paragraph 1 of the Board's Order No. 66277 of July 23, 1945, be varied or amended and if so, in what respect, and,
- (2) Consideration of all questions relating to the terms and conditions in respect to the said application and the works by said Order authorized.

As already indicated the matters involved in the second question were, by the said Order, expressly reserved for further consideration and Order of the Board.

Before proceeding further it would seem desirable to examine some of the powers of the applicant company and to make reference to certain applicable provisions of the Railway Act. Somewhat similar questions to those present here were before the Board in the Bell Telephone Company of Canada vs. The City of Ottawa, 46 C.R.C., 165 and the Bell Telephone Company of Canada vs. The Town of Trenton, 53 C.R.C. 372. The powers of the applicant company and certain provisions of the Railway Act are discussed in the latter case, commencing at page 374, and I do not think I can do better than to reiterate, in part, what was said on that occasion.

The company was incorporated by an Act of the Parliament of Canada, 43 Victoria, Chapter 67, assented to on April 29, 1880 and given wide powers in respect to the conduct of its business, of a telephone company. By Section 3 of the said Act as amended by Section 2, Chapter 95 of the Statutes of 1882,

it is, among other things, provided that the company may construct, erect and maintain its line or lines of telephone along the side of and across or under any public highways, streets, bridges, water-courses or other such places, or across or under any navigable waters, either wholly in Canada or dividing Canada from any other country, provided that the said company did not interfere with the public right of travel on or using such highways, streets, bridges, water-courses or navigable waters, and provided that in the cities, towns and incorporated villages, the location of the line or lines and the opening up of the streets for the erection of poles or for carrying the wires underground, shall be done under the direction and supervision of the engineer or such other officer as the Council may appoint, and in such manner as the Council may direct, and that the surface of the streets shall, in all cases, be restored to its former condition by and at the expense of the company.

By an Act to amend the Act incorporating the company, 45 Victoria, Chapter 95, of 1882, Section 4, it is provided that:—

“The said Act of Incorporation is hereby amended, and the works thereunder authorized, are hereby declared to be for the general advantage of Canada.”

While the said original Act of Incorporation of the Company has been amended on a number of subsequent occasions, none of the subsequent amendments appeared to concern the questions raised on this application.

While the company has a right to go upon the highways, squares or other public places of the township, it must, by reason of Section 373 (2) of the Railway Act, before constructing any telephone line upon, along or across any such highway, square or other public place, obtain the legal consent of the municipality, and by Section 373 (3), if any company cannot obtain such consent from the municipality, or cannot obtain such consent otherwise than subject to terms and conditions not acceptable to the company, the company may apply to the Board for leave to exercise its powers.

Subsection (4) of Section 373 provides that the Board may refuse or may grant such application in whole or in part, and may change or fix the route of such lines, wires or poles, and may order or impose any terms, conditions or limitations in respect of the application which it deems expedient, having regard for all proper interests.

The only complaint of the Township in respect to the location and construction of the line or lines of telephone, (underground conduit) specified in the Board's Order No. 66277, dated July 23, 1945, is in respect to the underground conduit and associate manholes, cables and equipment between concessions 1 and 2, commonly referred to as Oxford Street, from the westerly municipal limit of the City of London to the road in Lot 21, a distance of about $1\frac{1}{4}$ miles.

The maps or plans of the line or lines of telephone on Oxford Street referred to in the said Order No. 66277, provides for the location and construction of such line or lines about two or three feet north of the south boundary of the street. There are one or two deviations in this respect, but it would not seem necessary to enter into any discussion with respect to them.

On behalf of the Township it is contended that the lands on both sides of the road, Oxford Street, are suburban in character and that, already, a subdivision has been laid out with the prospect of additional ones immediately; that it is expected that, in the reasonably near future, road improvements, sewers, watermains, sidewalks and pavements will be required; and that this will entail widening and straightening and actually changing the course of the roadway in certain locations.

The Township suggests an alternative route for the telephone line which the company proposes to construct on Oxford Street and submits that the reason-

able course for the company to pursue would be to purchase a private right-of-way from a point where its conduits are proposed to pass under the tracks of the Canadian Pacific Railway Company, in or about Lot No. 23, Concession 3 of the said Township, southeasterly through farm lands along the right-of-way of the Canadian Pacific Railway Company to Platts lane which is the boundary between the City of London and the Township of London, and thence south on Platts lane to the said roadway known as Oxford Street.

At the conclusion of the sittings yesterday, in company with counsel for and representatives of the Township and the company, the Board made a view on the ground of that part of Oxford Street with which we are here concerned and the adjacent area.

Oxford Street, from the west boundary of the City of London, is a good township road with a gravel surface. There are one or two curves on the road which may require straightening and also a hill or two which would be improved by cutting down. This and certain other work on the Oxford Street road have, no doubt, been under consideration by the Township as future road improvements. These works, however, do not appear to be under immediate contemplation.

The company is not prepared to accept the alternative route suggested by the Township for the construction of its proposed line or lines of telephone. It contends, and I think rightly, that for its present purposes and from a good telephone engineering point of view, that the Oxford Street location is the most suitable and practical.

It would not seem necessary on this occasion to enter into a lengthy discussion of the respective legal rights of the parties or to review or recite what we consider to be the powers of the Board in respect to the matters here involved, and this because of what the Board has stated and decided on like questions on other occasions. (See *Bell Telephone Company of Canada vs. City of Ottawa*, 46 C.R.C., 165, and *Bell Telephone Company of Canada vs. The Town of Trenton*, 53 C.R.C., 372.)

The proposed telephone lines on Oxford Street are to be constructed by means of underground conduits, and associate manholes, cables and equipment. It seems to me that this form of construction, even from the view of the Township, is to be preferred. Nor am I able to see where the construction of the line as proposed is likely to cause any serious prejudice or inconvenience to the township.

Upon consideration of all that has been placed before us and a view of the location on the ground, I would dismiss the application in respect to the request that paragraph 1 of the Board's Order No. 66277, dated July 23, 1945, be varied or amended, except as to the modification of the two plans, as mentioned next hereunder.

In respect to the location of the proposed telephone line or lines at the small hill or hills on Oxford Street, counsel for the company, on behalf of the company, has offered to increase the depth at which the company's cables and works will be laid at this point and the following is the proposal which is made by counsel:

- (1) Plan 205·2, between stakes 14 plus 50 and 19 plus 34, the maximum elevation of the conduit system would be reduced to 798·5 feet, which would place the conduit 4·5 feet below the present road level.
- (2) Plan 205·8, between stakes 60 plus 34 and 64, the duct line would be lowered to elevation 820, placing the conduit system 4·5 feet below the road level at the crest of the hill.

The changes in the depth of construction which the company has proposed would appear to be advantageous to the township in the event that the town-

ship should in the future consider it desirable to lower the grade on the hill or hills, and I think that this work as proposed on behalf of the company should be carried out. The said plans filed with the Board and referred to in the said Board's Order will be considered as amended accordingly and without the necessity on the part of the company of filing new or additional plans.

There remains for consideration what terms and conditions, if any, should be imposed in respect to the said application and the works by the said Order authorized.

In respect to terms and conditions, the Township submits the following namely:—

- (1) The Board should now lay down the apportionment of the cost of moving and altering the telephone conduits to meet future requirements of the township and,
- (2) That, in any event, the construction proposed to be carried out by the applicant company as set out in its said application and in said Order be subject to the Public Services Works on Highways Act, R.S.O., 1937, Chapter 57.

In respect to the question of terms generally, I, with respect, adopt what was said by the Honourable Hugh Guthrie, the then Chief Commissioner, in the *Bell Telephone Company of Canada vs. The City of Ottawa*, commencing at page 176, as follows:—

“Notwithstanding the broad powers vested in the Board to impose terms in respect of these applications, I do not consider that any terms should be imposed which would derogate from the terms of the Special Act or limit or control or deny any special rights or privileges which Parliament has accorded to the company. I do not wish it to be inferred from what I have just said that the Board has not the power to impose any condition which it may deem expedient within the provisions of the Railway Act, but that for the purpose of the present applications the imposition of proper terms and conditions need not in any respect infringe upon the rights of the applicant company under its Special Act.”

In regard to the first conditions suggested by the Township, I do not think the Board should, at this time, attempt to lay down now the costs of moving and altering the conduits and works of the company to meet future requirements of the township in respect to road improvements and alterations or other municipal works should be made. Should such necessity arise in the future the Board will then decide whether, under all the circumstances present at the time, there should be any apportionment of the costs of such works upon application made to the Board for such purpose.

In regard to the second condition I might state that the City of Ottawa in the Ottawa case referred to above, urged the Board to impose a somewhat similar condition upon the company. The condition which the City of Ottawa suggested should be imposed is Condition 3 found on page 177 of the report of the Ottawa case and it reads as follows:

“Should it become necessary for the city to take up or relocate any telephone line, pole, cable, or other equipment for the purpose of enabling the city to construct or repair any municipal work, that the company should pay half of the cost of the re-establishing such telephone line in the manner specified in the Public Services work on Highways of the Province of Ontario, or in any Act of the Province of Ontario which might hereafter be passed in amendment thereof.”

When dealing with condition 3 quoted above in the Ottawa case, the then Chief Commissioner disposed of the matter in the following language which will be found on page 178 of the Report:—

“In regard to the third condition, I do not think it reasonable to impose such a burden upon the applicant company. If the city, in the future, should desire the relocation of the poles or equipment of the company for the purpose of enabling the City of Ottawa to construct or repair municipal works, the Board will then decide whether, under all the circumstances, there should be any apportionment of the cost of such work, upon application made to it for such purpose.”

In regard to the second conditions which the Township of London seeks here to have imposed, I do not think it reasonable or desirable to impose such a condition upon the company. I see no sufficient grounds here to justify us, at this time, in departing from the decision on a like point in the Ottawa case. If the Township, in the future, should desire the relocation of the conduits or equipment of the company for the purpose of enabling the Township to effect road improvements, road alterations or other municipal works, the Board will then decide whether, under all the circumstances present at the time, there should be any apportionment of the costs of such works upon application made to the Board for such purpose.

This disposes of the only two conditions which the Township seeks to have imposed upon the company. In the result, this part of the Township's application is also refused, nor do I think any other conditions should be imposed. An Order will issue in accordance with the conclusions set out above.

Deputy Chief Commissioner Sylvestre and Mr. Commissioner Stone concurred.

London, August 31, 1945.

Application of Anthracite Sales Company Limited, Toronto, Ontario, on behalf of P. L. Reaume & Son, Windsor, Ontario, for interpretation of demurrage rule 5 (b) with respect to demurrage for delay which takes place in unloading bulk freight frozen in transit.

File-1700.429

Mr. J. D. Arnup appeared for the Applicant;

Mr. W. J. Collins, Mr. A. K. Dysart, Mr. F. D. Turville, appeared for the Canadian Car Demurrage Bureau.

Heard at Toronto, Ont., July 26, 1945.

JUDGMENT

STONEMAN, *Commissioner*:

This is an application of Anthracite Sales Company Limited, Toronto, Ont., on behalf of P. L. Reaume & Son, Windsor, Ont., for interpretation of Demurrage Rule 5 (b) with respect to demurrage for delay which takes place in unloading bulk freight frozen in transit.

It is stated for the Applicant (the use of that term herein refers to Reaume & Son) that the private siding of Reaume & Son, dealers in coal and coke, located on the Essex Terminal Railway Company, where the cars in question were unloaded, will hold five cars which, under normal conditions, can be unloaded in

one day by one man, the coal being elevated to silos by means of a motor driven conveyor.

Cars of coke were shipped from Youngwood, Pa., in December, 1943, which reached destination in a frozen condition. The unloading of the cars containing the frozen coke was accomplished by putting men in the car to get to work with picks. It is stated some of the applicant's drivers and loaders were used for this purpose and the maximum number who could work at any one time with picks was five. In the Anthracite Sales Company's letter to the Board, dated February 21, 1945, it is stated "It was not possible to keep these men picking frozen coke when they had their other work to be done." In a letter from the Manager of the Demurrage Bureau to the Anthracite Sales Company, dated April 13, 1944, he states "The records before me indicate there were eleven days during the period in which the cars involved were detained on which no cars were unloaded". It would appear, therefore, that there were not five men working at the unloading continuously during the period of unloading the cars of frozen coke. There is on the file a copy of Reaume & Son's affidavit, dated March 8, 1944, stating it took four to eight hours with the help of five men to unload one car where ordinarily one man can unload one car in ninety minutes. It is also stated that during this period, just before Christmas, 1943, it was impossible to get outside help on account of the labour shortage.

The foregoing makes it clear that Applicant could not unload cars which arrived in a frozen condition with anything like the expedition with which they can be unloaded when the lading therein is not frozen.

A reference was made to some of the cars being bunched in transit. Counsel for the Demurrage Bureau stated the railway is prepared to make proper allowance for bunching in accordance with Demurrage Rule 6 (the bunching rule).

Demurrage Rule 5 (b) reads:—

"Should bulk freight be so frozen in transit, or before placement, as to render unloading impossible within the prescribed free time, such additional time shall be granted as may be necessary."

Counsel for Applicant submitted (Page 1559 of the evidence) "that the rule must be interpreted having regard to the particular circumstances of any particular case. If one were to paraphrase what I suggest is a proper interpretation of the rule, that rule would be paraphrased somewhat after this fashion, such necessary additional time shall be allowed as is reasonably necessary in all the circumstances of the case. That, in brief, is my submission, that you cannot lay down a hard and fast principle nor can you attack the matter from a theoretical standpoint and say I must take any particular car as if no other cars were in question at all."

The Demurrage Bureau in its submission of April 6, 1945, stated:—

"As Messrs. Reaume & Son's affidavit of March 8, 1944, clearly defines the unloading time required for releasing a car is from four to eight hours we were, under the tariff, without authority to grant them any consideration on account of frozen shipments."

"Our interpretation of Rule 5 (b) since its promulgation is, it applies to an individual car and cannot be applied to an accumulation of cars, each being unloaded within forty-eight hours from the time unloading commenced,".

At the hearing counsel for the Demurrage Bureau submitted that the rule applies to a single unit and not to a group of shipments. He also urged that the Board should give weight to the interpretation given in the United States by the Supreme Court and Interstate Commerce Commission to a demurrage rule

designed to afford relief under similar circumstances, the language of which it is claimed is quite comparable with the Canadian rule. The United States rule, referred to, provided that demurrage should not be collected "When shipments are frozen while in transit so as to prevent unloading during the prescribed free time. This exemption shall not include shipments which are tendered to consignee in condition to unload. Under this rule consignees will be required to make diligent efforts to unload such shipments." He referred to three United States decisions which may be summarized as follows:—

In the case of the Pennsylvania Railroad Company vs. Kittaning Company, 253 U.S. 318, decided by the Supreme Court of the United States, the headnote states—"No departure from the established policy manifested in the uniform demurrage code to consider the single car as the unit in applying the allowance for free time and the charges for demurrage, just as in the making of carload freight rates, can be inferred from the declaration in such code that no such demurrage charges shall be collected when shipments are frozen while in transit so as to prevent unloading during the prescribed free time providing a diligent effort to unload is made. If each car containing a frozen shipment could have been unloaded, considered separately, within the free time, any relief from the hardship resulting from excessive receipts of such cars on the same day must be found either under the so-called bunching rule under which a shipper is relieved from demurrage charges if, by reason of the carrier's fault the goods are accumulated and detention result or under the average agreement rule under which a monthly debit and credit account is kept of detentions and the shipper is relieved of charges for detaining cars more than 48 hours by a credit for other cars released within 24 hours."

In Wharton Steel Co. vs. Director General, as agent, and Central Railroad Co. of New Jersey, 59 I.C.C. 613, dealing with demurrage assessed on cars containing iron ore, frozen in transit, the Interstate Commerce Commission referred to this decision of the United States Supreme Court; found that in this case 48 hours was the maximum time required for unloading a carload of frozen ore; and dismissed the complaint.

In Cambria Steel Co. *et al*, vs. Director General, as agent, *et al*, 80 I.C.C. 633, dealing with demurrage assessed on ore and other commodities frozen in transit on which demurrage was assessed under the provisions of the same demurrage rule as dealt with by the United States Supreme Court, the Interstate Commerce Commission again referred to this decision of the United States Supreme Court. It also stated "In the Kittaning case *supra* the Supreme Court interpreted the rules in their application to cars of frozen ore, and the question before us is whether or not the rules so interpreted were unreasonable or unduly prejudicial", and in its conclusion found that the demurrage rule was not unreasonable.

In my opinion the foregoing is not conclusive as to the Canadian Demurrage Rule and we should not be governed thereby in reaching our decision.

The proper interpretation of this rule has not previously been brought in issue before the Board requiring a ruling with respect thereto. The "prescribed free time" which is referred to in the rule is 48 hours and a literal reading of the rule would appear to provide additional free time only when the frozen freight cannot be unloaded within 48 hours. This has been the Demurrage Bureau's interpretation and application of the rule for twenty-eight years without previous reference to the Board by anyone as to its propriety, from which it would seem that, generally speaking, such interpretation has not been considered unreasonable or at variance with the reading of the rule. Under the several demurrage rules, each car has always been dealt with as a unit and without reference to other cars. In the average demurrage case, 8 C.R.C. 332, in its Judgment dated

February 4, 1909, the Board stated: "The intention is that, under the Car Service Rules, each car shall be dealt with by itself and without reference to the movements of other cars". In a subsequent average demurrage case, covered by Judgment dated January 26, 1920, 25 C.R.C. 386, this was reiterated by the Board.

Certain commodities are subject to freezing in transit during the Winter season which is not attributable to any fault on the part of the carrier. I do not see upon what grounds the railway could be reasonably required to hold cars for indefinite periods beyond the free time allowance of 48 hours awaiting unloading without some compensation in the form of a demurrage charge.

Upon giving very careful consideration to all that was submitted, I cannot accept the interpretation of Counsel for the Applicant nor do I feel that a case has been made out which would warrant our directing any change in the reading and interpretation of the rule.

September 1, 1945.

J. A. STONEMAN.

I concur:

J. A. CROSS.

HUGH WARDROPE.

ORDER No. 66430

In the matter of the Order of the Board No. 62887, dated October 27, 1942, fixing charges for the transportation of lumber and forest products between stations in Western Canada for Hales H. Ross & Sons, Ltd. and The Imperial Lumber Company, Limited.

File No. 40994.13

SATURDAY, the 1st day of September, A.D. 1945.

J. A. CROSS, K.C., *Chief Commissioner.*

HUGH WALDROPE, *Asst. Chief Commissioner.*

F. M. MACPHERSON, *Commissioner.*

Upon reading the submissions filed by the Canadian Freight Association, including notice from Hales H. Ross & Sons, Ltd., that they have discontinued operations at Antross, Alberta; and upon the report and recommendation of the Director of the Traffic Department of the Board—

It is ordered: That the said Order No. 62887, dated October 27, 1942, be, and it is hereby, amended by striking out the word, "Antross", where it appears in the operative part of the Order.

J. A. CROSS,
Chief Commissioner.

ORDER No. 66476

In the matter of Agreed Charge between the Canadian National Railways, Canadian Pacific Railway Company, Northern Alberta Railways Company and certain shippers covering transportation of lumber and forest products between stations in Western Canada specified therein, approved by Order No. 59787, dated October 18, 1940.

File No. 40994.13

MONDAY, the 17th day of September, A.D. 1945.

HUGH WALDROPE, *Asst. Chief Commissioner.*

A. SYLVESTRE, K.C., *Deputy Chief Commissioner.*

G. A. STONE, *Commissioner.*

Whereas Chas. I. Edwards, of Rocky Mountain House, Alberta, has made application under subsection (6) of Section 35 of The Transport Act, 1938, and represented to the Board that his business will be unjustly discriminated against unless a similar charge be fixed for the transport of his lumber and forest products, and has expressed his willingness to meet and comply with the provisions and conditions of the said Agreed Charge—

It is ordered: That the agreed charges approved by the said Order No. 59787, dated October 18, 1940, be, and they are hereby, fixed for the transport by the said railways of lumber and forest products, as described in paragraph B of the said Agreed Charge, for Chas. I. Edwards from Rocky Mountain House, Horburg and Phoenix, Alberta, to the stations referred to in paragraph C (2) of the said Agreed Charge, subject to and upon the terms and conditions contained in the said Agreed Charge; and the Board hereby appoints the date of this Order as the date on which the said charges fixed as aforesaid are to come into operation.

HUGH WALDROPE,

Assistant Chief Commissioner.

SUMMARY OF ORDERS ISSUED BY THE BOARD

- 66416 Aug. 27—Authorizing C.P.R. to operate its passenger trains over C.N.R. crossing at Komoka, Ont. mileage 11.8 Windsor Subd. at any speed not exceeding 50 miles per hour.
- 66417 Aug. 27—Authorizing C.N.R. to operate over siding serving Steep Rock Iron Mines, Limited, near Atikokan, Ont. notwithstanding less than standard clearances.
- 66418 Aug. 28—Approving location of C.N.R. freight and passenger shelter at Peavey, Alberta.
- 66419 Aug. 28—Approving extension of time for installation of flashing light signals and bells at Talbot St. Essex, Ontario, until November 1, 1945, by New York Central Railroad Company (M.C.R.).
- 66420 Aug. 28—Authorizing construction by C.N.R. of siding across Cabot St. Cote St. Paul, Montreal Terminals, P.Q. to serve Pennsylvania Anthracite Company.
- 66421 Aug. 29—Approving plan C.N.R. showing changes in circuit controlling wigwags at road crossing just east of station at Grimsby Beach, Ont.
- 66422 Aug. 29—Approving relocation of C.P.R. station at Leaside, Ont., mileage 103.6 Oshawa Subdivision.
- 66423 Aug. 30—Approval under Maritime Freight Rates Act tolls published in Supplement No. 66 to Tariff C.T.C. No. E.2448 and in Supplement No. 34 to Tariff C.T.C. No. E.3859 filed by C.N.R.
- 66424 Aug. 31—Authorizing C.N.R. to operate over proposed siding to serve Johnson & Johnson Limited at Longue Pointe, P.Q. notwithstanding less than standard clearances.
- 66425 Aug. 31—Declaring C.N.R. crossing just east of Stevensville Station, Ont., mileage 8.20 Cayuga Subd. protected to Board's satisfaction.
- 66426 Aug. 31—Declaring C.N.R. crossing of Helena Street (Erie Beach), 2.85 miles west of Fort Erie West, Ont., mileage 3.86 Dunnville Subd. protected to Board's satisfaction.
- 66427 Aug. 29—Declaring C.N.R. crossing at mileage 0.26 Ballast Pit Spur, Springhill Subd., N.S., protected to Board's satisfaction; and ordering all movements over said crossing be flagged by a member of the train crew.
- 66428 Sept. 1—Authorizing C.P.R. to construct, maintain and operate proposed wye tracks at Windermere, B.C., mileage 92.8 Lake Windermere Subd., within 6 months.
- 66429 Sept. 1—Approval under Maritime Freight Rates Act tolls published from Yarmouth, N.S., to Peterboro, Ont., in Item 550 of 8th revised page 34, and from Saint John, N.B. to Kipawa, Que., in Item 1225 of 19th revised page 54 to Tariff C.T.C. No. E. 4757.
- 66430 Sept. 1—Order amending Order 62887 by striking out the word "Antross" in agreed charge for transportation of lumber and forest products for Hales H. Ross & Sons, Ltd. and The Imperial Lumber Company, Limited.
- 66431 Sept. 1—Declaring C.N.R. crossing at Dundas Street, London, Ont., mileage 29.90 Thorndale Subd. protected to Board's satisfaction.
- 66432 Sept. 5—Declaring C.P.R. crossing at Adelaide Street, London, Ont., mileage 113.73 Galt Subd. protected to Board's satisfaction; speed limit of fifteen miles an hour, imposed by Order No. 58165, dated Nov. 1, 1939, to be maintained.
- 66433 Sept. 5—Authorizing C.P.R. to construct, maintain and operate branch line of railway to serve The Saskatchewan Co-Operative Wheat Producers Limited, Saskatoon, Sask.
- 66434 Sept. 5—Approval under Maritime Freight Rates Act tolls published in Supplement No. 5 to Tariff C.T.C. No. E.3879 and Supplement No. 8 to Tariff C.T.C. No. E.3885 filed by C.N.R.
- 66435 Sept. 5—Approving plan showing proposed changes to interlocking plant of N.Y.C. (Michigan Central Railroad) at its crossing with the C.N.R. at Canfield Junction, Ontario, in lieu of Plan A-1386 approved by Order No. 65498 dated December 6, 1944.
- 66436 Sept. 5—Declaring C.N.R. crossing at Norwich Street, Woodstock, Ontario, mileage 49.95 Dundas Subd. protected to Board's satisfaction.
- 66437 Sept. 5—Dismissing application of Village of l'Epiphanie, P.Q. for leave to construct public highway crossing tracks of C.P.R. east of station at l'Epiphanie.
- 66438 Sept. 5—Declaring C.N.R. crossing just east of Lawrence Station, Ont. mileage 12.26 Chatham Subd., protected to Board's satisfaction.

- 66439 Sept. 5—Declaring C.P.R. crossing at Oxford Street, Woodstock, Ont., mileage 87.64 Galt Subd., protected to Board's satisfaction.
- 66440 Sept. 6—Ordering C.N.R. and C.P.R. to close the roadway known as Dunn's Crossing, Fredericton, N.B., by September 15, 1945.
- 66441 Sept. 6—Ordering that C.P.R. be relieved from maintaining gates at farm crossing just east of the bridge over the Kananaskis River, Seebe, Alberta, mileage 51.6 Laggan Subd.
- 66442 Sept. 6—Ordering C.P.R. to widen the bridge over its tracks on Nelson Street, between Station Street and Edmund Street, Sudbury, Ont. Costs of construction and maintenance of works to be borne and paid by applicant, Municipal Corporation of the City of Sudbury.
- 66443 Sept. 6—Approving proposed portable station to be erected at Mosborough, Ont. by C.N.R.
- 66444 Sept. 6—Declaring C.P.R. crossing at Winnipeg Street, Regina, Sask., mileage 87.9 Tyvan Subd., protected to Board's satisfaction, and ordering that speed limit of 10 miles per hour be maintained.
- 66445 Sept. 6—Declaring C.N.R. crossing at 33rd Street, Saskatoon, Sask., Saskatoon Terminal, protected to Board's satisfaction, and ordering that speed limit of 10 miles per hour be maintained.
- 66446 Sept. 6—Declaring C.N.R. crossing at Victoria Avenue, Fort William, Ontario, mileage 4.10 Kashabowie Subd., protected to Board's satisfaction, and ordering that speed limit of 10 miles per hour be maintained.
- 66447 Sept. 7—Authorizing C.N.R. to construct proposed approach track across 53rd Avenue, in the Town of Pointe aux Trembles, P.Q. Apportionment of cost reserved for further consideration by the Board.
- 66448 Sept. 7—Authorizing C.N.R. to construct approach track across 43rd Ave. in the Town of Pointe aux Trembles, P.Q. Cost of construction and maintenance reserved for further consideration by the Board.
- 66449 Sept. 7—Authorizing C.N.R. to construct approach track across de la Rousseliere St. in the Town of Pointe aux Trembles, P.Q. Cost of construction and maintenance reserved for further consideration by the Board.
- 66450 Sept. 7—Ordering amendment of Board's Order No. 54307, dated May 18, 1937 (C.N.R.), which authorized the construction of trackage across public highway at mileage 10.64 Springhill Subd. near Debert, N.S.
- 66451 Sept. 7—Authorizing The Toronto Harbour Commissioners to construct, maintain and operate extension of branch line of railway to serve Disher Steel Construction Co. Limited.
- 66452 Sept. 7—Declaring C.P.R. crossing first west of Mozart Station, Saskatchewan, mileage 106.4 Wynyard Subd. protected to Board's satisfaction.
- 66453 Sept. 8—Declaring C.N.R. crossing of Kerr St. County of Halton, Ont., mileage 21.95 Oakville Subd. protected to Board's satisfaction.
- 66454 Sept. 10—Ordering approval of plan No. SD. 3329-A, August 29, 1945, in lieu of plan SD. 3329-A, dated September 3, 1941, showing protection at crossing of George V Ave. Montreal East, P.Q., mileage 30.7 l'Assomption Subd.
- 66455 Sept. 10—Approval under Maritime Freight Rates Act tolls published in Supplement No. 63 to Tariff C.T.C. No. E.3762 and Supplement No. 25 to Tariff C.T.C. No. E.3854 filed by C.N.R.
- 66456 Sept. 10—Authorizing C.P.R. to remove caretaker at Cheltenham, Ont. mileage 17.1 Orangeville Subd.
- 66457 Sept. 10—Approving proposed alterations and additions to existing storage facilities of McColl-Frontenac Oil Co. Limited near tracks of C.P.R. at Lethbridge, Alberta.
- 66458 Sept. 10—Approving proposed alterations and additions to existing storage facilities of McColl-Frontenac Oil Co. Limited at Claresholm, Alberta.
- 66459 Sept. 10—Approving proposed location of gasoline storage bulk plant of District Services Limited near tracks of C.N.R. at Kapuskasing, Ont.
- 66460 Sept. 10—Authorizing C.N.R. to open for traffic their line of railway from point on the line between St. Henry and Pointe St. Charles, near Atwater Avenue, along River St. Pierre and the Aqueduct Tail Race to the Waterfront, Montreal, P.Q.
- 66461 Sept. 10—Authorizing C.N.R. to operate over siding serving Dept. of National Defence, Naval Service, at mileage 16.75 Nashwaak Subd. McCann, N.B. notwithstanding less than standard clearance.

- 66462 Sept. 11—Authorizing New York Central Railroad Company (M.C.R.) to operate its passenger trains at 60 miles an hour and its freight trains at 45 miles an hour through the interlocking plant at crossing with C.N.R. at Hagersville, Ont.
- 66463 Sept. 11—Approving plan showing proposed automatic signals replacing existing mechanical interlockers at crossings of Lake Erie & Northern Railway, C.N.R. and Toronto, Hamilton and Buffalo Railway at Brantford, Ont. provided Lake Erie & Northern Railway Company install automatic time recorder at each crossing.
- 66464 Sept. 13—Authorizing C.P.R. and C.N.R. to operate their trains through interlocking plant at Lennoxville, P.Q. mileage 65.9 Megantic Subd. without first being brought to a stop, provided signals are in "Proceed" position.
- 66465 Sept. 13—Authorizing C.N.R. to operate over bridge across Rosebud River at mileage 65.6 Drumheller Subd. Alberta.
- 66466 Sept. 13—Authorizing C.N.R. to operate over bridge across Rosebud River at mileage 65.7 Drumheller Subd. Alberta.
- 66467 Sept. 13—Approving location of one additional vertical storage tank and pipe lines thereto of The British American Oil Company, Limited, near tracks of Canadian Pacific Railway Company at Nipawin, Sask.
- 66468 Sept. 13—Approving location of unloading rack, pipe lines, pump house, 3 vertical storage tanks, warehouse and other facilities for handling and storage of inflammable liquids of North Star Oil Limited near tracks of C.N.R. at Tessier, Sask.
- 66469 Sept. 13—Approving relocation of unloading rack, pump house, pipe lines and one additional horizontal storage tank of McColl-Frontenac Oil Co. Limited near C.N.R. tracks at Alberton, P.E.I.
- 66470 Sept. 13—Approving location of one additional vertical storage tank and pipe lines thereto of The British American Oil Company, Limited, near tracks of Northern Alberta Railways Company at Whitelaw, Alberta.
- 66471 Sept. 13—Approving location of one additional vertical storage tank and pipe lines thereto of The British American Oil Company, Limited, near tracks of Northern Alberta Railways Company at Fairview, Alberta.
- 66472 Sept. 13—Approving location of one additional vertical storage tank and pipe lines thereto of The British American Oil Company, Limited, near the tracks of the Northern Alberta Railways Company at Wanham, Alberta.
- 66473 Sept. 14—Approving location and details of second-hand shelter to be erected by the C.N.R. at Lac a Beauce, P.Q., mileage 111.04 La Tuque Subd.
- 66474 Sept. 13—Approval under Maritime Freight Rates Act tolls published under Column "KK" of 2nd revised page 20A. in Item 726 of original page 41B and Items 727, 728, 729 and 730 of original page 41C to Tariff C.T.C. No. E.4757 filed by C.P.R.

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The Board of Transport Commissioners for Canada

Judgments, Orders, Regulations and Rulings

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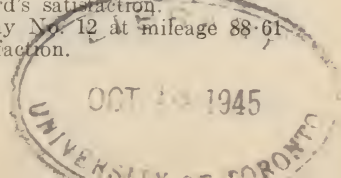
Ottawa, October 15, 1945

No. 14

This publication is issued fortnightly, on the 1st and 15th of each month. Annual subscription, \$3.00; single numbers, 20 cents; in quantities, 25 per cent discount. Remittances should be made to the King's Printer, Ottawa, by postal money order, express order or accepted cheque. The use of currency for this purpose is contrary to the advice of the postal authorities and entails a measure of risk. Postage stamps, foreign money or uncertified cheques will not be accepted. No extra charge is made for postage on documents forwarded to points in Canada and in the United States, but cost of postage is added to the selling price when documents are mailed to other countries. Early application should be made for copies in quantities. Subscriptions should be sent, in every case, to the King's Printer, Ottawa.

SUMMARY OF ORDERS ISSUED BY THE BOARD

- 66475 Sept. 14—Authorizing C.N.R. to eliminate Fultons, Ont., as a flag stop for trains 329-330; and to abandon and remove the station shelter at said point.
- 66476 Sept. 17—Approving Agreed Charge between the C.N.R., C.P.R., Northern Alberta Railway Co. and certain shippers covering transportation of lumber and forest products between stations in Western Canada specified therein.
- 66477 Sept. 17—Declaring C.P.R. crossing of Braid Street in the City of New Westminster, B.C., mileage 5·87 Westminster Subd., protected to Board's satisfaction.
- 66478 Sept. 17—Declaring C.N.R. crossing of highway first immediately east of Mallorytown Station, Ont., mileage 138·18 Gananoque Subd., protected to Board's satisfaction.
- 66479 Sept. 17—Declaring C.N.R. crossing of Rue de la Cathedrale first crossing north of Rimouski Station, Que., mileage 18·17 Rimouski Subd., protected to Board's satisfaction.
- 66480 Sept. 18—Approving under Maritime Freight Rates Act tolls published in tariffs filed by C.N.R. under Sec. 3.
- 66481 Sept. 18—Approving under Maritime Freight Rates Act toll published in tariffs filed by the Dominion Atlantic Railway Co. under Sec. 9.
- 66482 Sept. 18—Authorizing C.N.R. to reconstruct bridge over the public road at mileage 50·42 Alderdale Subd., Ont.
- 66483 Sept. 18—Declaring Vancouver & Lulu Island Railway crossing at 33rd Avenue, Vancouver, B.C., protected to Board's satisfaction.
- 66484 Sept. 18—Extending time within which the Great Northern Railway Co. was required to install two flashing light signals and one bell at crossing of Columbia Street, New Westminster, B.C.
- 66485 Sept. 18—Declaring C.N.R. crossing of Ellis Street first crossing south of Kelowna Station, B.C., mileage 118·9 Okanagan Subd., protected to Board's satisfaction.
- 66486 Sept. 18—Approving under Maritime Freight Rates Act tolls published in tariffs filed by the Dominion Atlantic Railway Co. under Sec. 9.
- 66487 Sept. 18—Authorizing C.N.R. to use and operate bridges on their Drumheller Subd., Alberta District, at certain mileages.
- 66488 Sept. 19—Authorizing Northern Alberta Railway Company to construct, at its own expense, siding across road allowance at mileage 137·5 Waterways Subd., Alta.
- 66489 Sept. 18—Approving location of pipe lines, etc., of Shell Oil Company of Canada, Limited, near C.N.R. tracks at Hope, B.C.
- 66490 Sept. 19—Declaring Vancouver & Lulu Island Railway crossing of Broadway Avenue, Vancouver, B.C., protected to Board's satisfaction; all trains are required to come to a stop before passing over said crossing.
- 66491 Sept. 19—Declaring C.N.R. crossing of highway first public crossing north of Clan William Station, Man., protected to Board's satisfaction.
- 66492 Sept. 19—Declaring C.P.R. crossing of Provincial Highway No. 12 at mileage 88·61 MacTier Subd., Ont., protected to Board's satisfaction.



- 66493 Sept. 19—Declaring C.P.R. crossing of Victoria Road, Guelph, Ont., at mileage 30·19 Goderich Subd., protected to Board's satisfaction; present speed limitation of ten miles per hour to be maintained.
- 66494 Sept. 20—Approving location of C.N.Rys'. Class 4A station building at Birch River, Man.
- 66495 Sept. 22—Authorizing Pere Marquette Railway Co. to install two flashing light signals and one bell at crossing of Provincial Highway No. 2 near Chatham, Ont., about mileage 18·91 Sarnia and Erieau Subd.
- 66496 Sept. 22—Declaring C.N.R. crossing of Bridge Street first crossing east of St. Leonard Station, N.B., mileage 87·80 Grand Falls Subd., protected to Board's satisfaction.
- 66497 Sept. 22—Declaring C.N.R. crossing of Charlotte Street, City of Peterboro, Ont., at mileage 63·55 Campbellford Subd., protected to Board's satisfaction; present speed limitation of ten miles per hour to be maintained.
- 66498 Sept. 22—Approving clearances at loading platform near track leading to Armstrong Ballast Pit, located at mile 112·23 Kowkash Subd., at Armstrong, Ont.
- 66499 Sept. 22—Authorizing C.P.R. to reconstruct said Bridge No. 7·10 Peterboro Subd., near Norwood Station, Ont.
- 66500 Sept. 22—Approving location of pipe lines, etc., of The British American Oil Co., Limited, near C.N.R. tracks at Montreal East, Que.
- 66501 Sept. 22—Amending Order No. 57820, dated August 9, 1939, by striking out the words, "for the period of the next five years", after the word, "Mundare", in the sixth line of the operative part of the Order.
- 66502 Sept. 22—Declaring C.P.R. crossing of Albert Street in the Village of Alliston, Ont., mileage 44·99 MacTier Subd., protected to Board's satisfaction.
- 66503 Sept. 24—Authorizing C.P.R. to construct, at its own expense, an additional track across First Avenue, at grade, in the City of Regina, Sask., at mileage 0·84 Lanigan Subd.
- 66504 Sept. 24—Authorizing C.N.Rys. and New York Central Railroad Co to operate their trains through interlocking plant at crossing with N.Y.C. at Cornwall Junction, Ont.
- 66505 Sept. 24—Declaring C.P.R. crossing of Highway No. 43 first public crossing east of station at Monklands, Ont., mileage 63·05 Winchester Subd., protected to Board's satisfaction.
- 66506 Sept. 25—Declaring C.P.R. crossing of highway first public crossing east of station at Springhill, Que., mileage 8·4 Megantic Subd., protected to Board's satisfaction.
- 66507 Sept. 25—Authorizing C.P.R. to construct north leg of its proposed wye track, at grade, across road allowance south of and adjoining the Southwest Quarter of Sec. 3, Twp. 15, Rge. 15, West Principal Meridian, Town of Neepawa, Man.
- 66508 Sept. 25—Approving revised location of Dominion Atlantic Railway Co's. main line from a point southeast of Crowell Creek, at mileage 39·64, to a point northwest of Earl's Brook, at mileage 40·51 Halifax Subd., near Hantsport, N.S.
- 66509 Sept. 25—Approving under Maritime Freight Rates Act tolls published in tariffs filed by Dominion Atlantic Railway Co. under Sec. 9.
- 66510 Sept. 26—Rescinding Order No. 32204, dated March 10, 1922, and amending Order No. 64248, dated November 25, 1943, by striking out the last paragraph thereof and substituting another therefor.
- 66511 Sept. 26—Approving location of pipe lines, etc., of Imperial Oil Limited near C.P.R. tracks at Imperial, Sask.
- 66512 Sept. 26—Approving location of pipe lines, etc., of Viau Bros. near C.N.R. at Valleyfield, Que.
- 66513 Sept. 27—Declaring C.N.R. crossing of Ontario Road first public crossing south of the Michigan Central Railroad diamond about one mile west of Welland Station, Ont., mileage 14·91 Welland Subd., protected to Board's satisfaction.
- 66514 Sept. 27—Declaring C.P.R. crossing of highway first public crossing north of Milk River Station, Alta., mileage 34·09 Coutts Subd., protected to Board's satisfaction.
- 66515 Sept. 28—Authorizing C.P.R. to construct branch line of railway to serve Curran & Briggs Limited at Camrose, Alta.
- 66516 Sept. 27—Approving clearances of proposed coal hopper and chutes at tipple constructed over branch lines of railway serving Castor Creek Collieries Ltd. in the Southwest Quarter of Sec. 3, Twp. 38, Rge. 14, West 4th Meridian, at mileage 23·34 Lacombe Subd., Alta.
- 66517 Sept. 28—Approving location of pipe lines, etc., of McColl-Frontenac Oil Co. Limited near C.P.R. tracks at Sault Ste. Marie, Ont.

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The Board of Transport Commissioners for Canada

Judgments, Orders, Regulations and Rulings

Vol. XXXV

Ottawa, November 1, 1945

No. 15

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Brompton Pulp and Paper Company Limited, Applicant, and Canadian National Railways (Canadian National Railway Company and Canadian Northern Ontario Railway Company), Respondents. Board's File No. 44168.

Mr. Glyn OSLER, K.C., and Mr. J. T. Garrow appeared for the Applicant;

Mr. A. K. Dysart for the Respondent Railways.

Heard at Toronto, Ontario, on July 24th, 25th, and 26th, 1945.

JUDGMENT

CROSS, *Chief Commissioner*:

Mr. C. R. Magone, K.C., attended at the hearing with a watching brief, so called, on behalf of the Attorney General of the Province of Ontario, not a party to these proceedings.

This is an application by Brompton Pulp & Paper Company Limited, a company incorporated under the laws of the Dominion of Canada, with head office in the City of Montreal, in the Province of Quebec, hereinafter referred to as the Applicant, for an Order pursuant to Section 33 of the Railway Act, R.S.C., 1927, and Amendments, directing the Canadian National Railway Company to reconstruct or alter or to remove altogether the bridges now used by it to cross the waters of the Blackwater River at mileages 25.2 and 24.9 Dorion Subdivision in the District of Thunder Bay, in the Province of Ontario, so that such bridges will not impede or obstruct the navigation and use of the said Blackwater River and so that the said Railway will cease to impede, obstruct or otherwise interfere with the Applicant's right to use the said river to run or drive its pulpwood logs and timber therein in transporting the same to its pulpwood mills at Nipigon and Red Rock, Ontario.

The answer of Canadian National Railways to the application filed with the Board is made on behalf of Canadian National Railways (Canadian National Railway Company and Canadian Northern Ontario Railway Company). These companies are sometimes hereafter jointly referred to as the Railways.

The applicant is engaged in the manufacture of pulp and paper and carries on business in the Provinces of Ontario and Quebec and elsewhere throughout Canada and in the United States of America. By the terms of an agreement, put in evidence, made between His Majesty the King in the right of the Province of Ontario and the applicant, dated the 18th day of February, 1942, the applicant was granted the right to cut and remove pulpwood logs and timber from several large timber areas in the District of Thunder Bay, in the Province of Ontario. One of the timber areas so granted comprises 1,183 square miles, more or less, situated on the east side of Lake Nipigon, and the said Blackwater River flows in a southwesterly direction through this area to empty into the said lake.

The applicant is now operating a pulpwood mill on the Nipigon River at Nipigon, Ontario, and is in the process of completing a substantially larger pulpwood mill at Red Rock, which is at the mouth of the Nipigon River where it empties into Nipigon Bay. The applicant proposes carrying on extensive cutting operations in the timber area drained by the Blackwater River, and alleges that the use of its waters is essential in order to enable the applicant economically to transport the pulpwood, logs and timber so cut to Lake Nipigon and thence to its mills at Nipigon and Red Rock.

The said two bridges constructed by the Railways, or one of the railways, at mileage 25.2 (in one or more of the maps or plans given as mileage 25.3), and at mileage 24.9, Dorion Subdivision, are pile trestle bridges. These two bridges, in respect to which the applicant complains, will be more fully described later.

The applicant contends that the said Blackwater River, particularly at high water, forms a public way or means of transportation which the public has a legal right to use; and alleges that the Railways by reason of the nature and construction of the said bridges have obstructed and are continuing to obstruct, without colour of right or authority, and contrary to Sections 245, 246, 247 and 248 of the Railway Act, the right of user which the public in general and the applicant in particular has to the waters of the said Blackwater River. The applicant further alleges that said Blackwater River is a navigable body of water and that the bridges in question constitute an obstruction in and impede the free navigation of the river.

It would seem desirable here to state the corporate history of the railway company whose line of railway is alleged to be causing the obstruction which gave rise to the present application and the authority under which such line of railway, including the two bridges in question were constructed.

In 1895, by 58-59 Victoria, Chapter 50 (Canada) The James Bay Railway Company was incorporated. It was empowered to build a line of railway from Parry Sound, in the Province of Ontario, to French River at or near Doke's Indian Reserve, thence in a northerly direction to the easterly side of Lake Wahnapiat, and thence to a point at or near the mouth of Moose River on James Bay.

In 1905, by 4-5 Edward VII, Chapter 110 (Canada) The James Bay Railway Company was authorized to do two things. First of all, with the consent of the Governor in Council, to change its name, and secondly to construct lines of railway from Toronto to Ottawa; from French River, via Ottawa and Hawkesbury, to Montreal; and from Sudbury to Port Arthur. It is the line from Sudbury to Port Arthur, in the Province of Ontario, with which we are here concerned. Section 5 of the last named statute provided that the construction of the lines of railway was to be commenced within two years, and completed and put into operation within five years.

In 1906 The James Bay Railway Company changed its name to the Canadian Northern Ontario Railway Company pursuant to the Act of 1905 referred to above. The change of name was approved by the Governor in Council by Order in Council P.C. 1193, dated June 25, 1906. The Order in Council was passed pursuant to Section 2 of the Act of 1905.

In 1907, by 6-7 Edward VII, chapter 72 (Canada), the time for construction of the Sudbury to Port Arthur line was extended for another two years and the time for completion of the line for another five years.

In 1912 another Act of the Parliament of Canada was passed, that is 2 George V, Chapter 75, and the Canadian Northern Ontario Railway Company (formerly the James Bay Railway Company), under that statute, was authorized to build and put into operation the line from Sudbury to Port Arthur. This power was stated to lapse if the line was not completed in five years.

In 1914 The Canadian Northern Ontario Railway Company, for the first time, was mentioned in one of the Dominion Statutes as forming part of the Canadian Northern System in Canada. This reference is found in 4-5 George V, Chapter 20.

In 1917, by 7-8 George V, Chapter 24, the Dominion Government was empowered to acquire capital stock of Canadian Northern Railway Company and the Canadian Northern System, including the Canadian Northern Ontario Railway Company.

Then by the Canadian National Railways Act, 1919, the Canadian Northern System, including the Canadian Northern Ontario Railway Company, became part of the Canadian National Railways.

The James Bay Railway Company, now the Canadian Northern Ontario Railway Company, as previously mentioned, was, by the Act of 1905, 4 and 5, Edward VII, Chapter 119, given power to construct a line of railway from Sudbury to Port Arthur, which includes the portion of the line here in question. By subsequent enactments the time for construction was extended and, ultimately the line was completed within the statutory limits as to time.

Our attention was directed by counsel for the Railways to the powers conferred upon a railway company, in respect to construction, by various sections of the Railway Act, but it would not seem necessary to refer to them all specifically here. I will, however, mention some of the steps taken by the Canadian Northern Ontario Railway Company in compliance with the requirements of certain provisions of the Act of 1906. The route map which was then designated as Plan No. 20 was, pursuant to Section 157 (now Sec. 167), approved by the Minister of Railways and Canals, on January 14, 1911. A plan, profile and book of reference were made by the company and submitted to the Board, then the Board of Railway Commissioners for Canada, pursuant to Sections 158 and 159 (now Secs. 168 and 170). The Board, by Order No. 14717, dated September 6, 1911, approved the location of the company's line of railway as shown on the plan and profile and described in the book of reference on file with the Board under File No. 9188.62. The map or plan and profile of the railway was filed with the Registrar of Deeds at Port Arthur, Ontario, on September 16, 1911.

By Section 257 of the Railway Act of 1906 (now Sec. 251) it is provided that the company shall not commence the construction, or reconstruction of or any material alteration in any bridge, tunnel, viaduct, trestle, or other structure, through, over, or under which the company's trains are to pass, the span, or proposed span or spans, or length of which exceeds eighteen feet, until leave therefor has been obtained from the Board, unless such construction, or alteration, is made in accordance with standard specifications and plans approved by the Board.

The bridges at Warneford, mileages 24.9 and 25.2, Dorion Subdivision, were constructed in 1913 in accordance with standard plans approved by the Board by Orders No. 15344, dated October 31, 1911, No. 16360, dated April 22, 1912, and No. 10096, dated April 7, 1910.

Section 261 of the Act of 1906 (now Sec. 276) precludes a railway company from opening its line for the carriage of traffic other than for the purposes of construction of the railway until leave has been obtained from the Board. The Board by its Order No. 24,319, dated October 15, 1915, authorized the Canadian Northern Ontario Railway Company to open for the carriage of traffic its said line of railway.

The said bridges were reconstructed in the years 1930 and 1931 respectively in accordance with standard plans approved by the Board by Order No. 35,888, dated the 12th day of December, 1924.

Each of the two bridges which cross the waters of the Blackwater River at mileages 25.2 and 24.9, Dorion Subdivision, as originally constructed and as reconstructed, cross the river not at right angles to the stream, but at a flat angle.

The country through which the railway is constructed is rough with high rock cliffs and the only practical location of the railway was to follow the course of the Blackwater River. The river is a tortuous river, with a very narrow valley, and the only means by which the railway company could avoid very heavy rock cuts and tunnels was to cross the river on whatever angles it could. While the crossings in question are flat crossings they were the most practical location for the railway at the time.

The bridge, as reconstructed, at mileage 24.9 Dorion Subdivision, is a pile trestle bridge about 348 feet in length. The distance between the trestles is 12 feet from centre to centre, thus leaving an opening between trestles of about ten to eleven feet. There are 29 trestles in the bridge; between the 20th trestle and the 21st trestle (counting from the east side) the opening is about 24 feet and the line is carried over the span on steel girders.

On the upper side of this bridge at the west end of the 24 foot opening, a rock-filled glance pier has been built apparently by the Railways and improved by the applicant to carry the current of the river into the opening. This pier is six feet high and fits at an angle inside the bridge opening, and about one-third the distance along the west wall. It thereby cuts off some of the width of the opening, and lessens the width of the approach to the opening. The river between the bank and the west side of the bridge is very narrow for about 60 feet. The pier helps to facilitate the passage of the pulpwood and logs of the applicant through the bridge.

The trestle bridge, as reconstructed, at mileage 25.3, Dorion Subdivision, is similar in design and construction to the bridge at mileage 24.9 described above. It is about 348 feet in length. There are 28 trestles and the openings between the trestles are from ten to eleven feet. From the 17th to the 19th trestle (counting from the east side) has been set aside for passing wood. This has been planked on the inside to carry the wood through without catching on the piling in the trestles.

The applicants have also put three cribs in the river at this last mentioned bridge for the purpose of assisting in directing the current of the water and the flow of the wood under the bridge. The bridges are wooden bridges and will require to be rebuilt again in about three years time.

The applicant company first became interested in the use of the Blackwater River in the year 1942, when it entered into the agreement previously mentioned, dated February 18th, 1942, made between His Majesty the King, represented therein by the Minister of Lands and Forests for the Province of Ontario. Under

this agreement the applicant obtained a grant for a period of twenty-one years giving it the right to cut timber in certain areas, including an area through which the said Blackwater River runs.

The applicant commenced to cut pulpwood and logs on its Blackwater River timber limits in 1942 and has carried on such operations since that time. The pulpwood, logs and timber are placed on the ice on the river, or near the river banks during the winter season. Then, when the river opens in the spring, or during the early summer, the pulpwood and logs are floated down the river loose by a process called "driving the river". A number of men are employed on the drive to assist the wood, logs and timber on their way downstream and to prevent them from becoming or remaining lodged on the shores of the river, or in shallow places, and to prevent, as far as possible, the forming of jams at falls or rapids or other difficult places in the river. If a jam does occur it is the purpose of the men to break up the jams and release the wood, logs and timber so that they may again be floated away.

The drive of the river starts in the Beardmore area or a little above. Beardmore is a railway station on the line about four miles upstream from Warneford another station near which the two bridges are located. The total length of the drive on the Blackwater River is about twelve miles, at the end of which Nipigon Lake is entered.

The applicants have driven the river during the seasons 1943, 1944 and 1945. The quantities floated or run down, which included the passage of the two bridges, are approximately as follows: In the spring of 1943, 800 cords of pulpwood and 10,000 logs; in the spring of 1944, 6,000 cords of pulpwood; and in the spring of 1945, 23,000 cords of pulpwood.

The quantity of pulpwood which the applicant company would like to cut and drive down the Blackwater River each season is approximately 40,000 cords.

The pulpwood brought down consists of logs about eight feet in length, and the saw-logs, generally speaking, sixteen feet in length. All of these are loose logs.

The applicant contends that the two bridges at mileages 24.9 and 25.2, Dorion Subdivision of the railway, provide a definite barrier to the normal passage of wood down the Blackwater River in the spring freshets.

The nature of the location and construction of the bridges, including the openings or passage-ways through the bridges has been already fully described.

The Blackwater is a river in which there is a good deal of variation in height according to rainfall. It sometimes changes in height, in spring flood, from four to eight feet in as little as a week's time. As the river rises its main current changes somewhat. These varying conditions of the current at the bridges increase the difficulty. Because of the nature of the bridges it is necessary to direct the wood, in some instances, almost at right angles across the stream for the purpose of passing it through the openings under the bridges.

The applicant has found it necessary at certain periods during the drive to employ as many as sixteen men at one time at and in the vicinity of the bridges to assist in the direction and movement of the wood through the bridges and down the river. This, of course, occasions considerable additional expense to the applicant. The wood can only be passed through in limited quantities and, as a consequence, the amount that can be floated or run down in a given time is considerably decreased. One of the witnesses called by the applicant placed the amount at about fifty per cent of the amount they should be able to drive down the river. In this respect the lower bridge at mileage 25.2 presents the greatest problem. When a flow of wood is allowed down at the capacity for the bridge above, this lower bridge will not take it, and the result is the creation of a jam at the lower bridge.

It is clear that the bridges, and particularly the lower bridge at mileage 25.2, act as an obstruction to the normal passage of the pulpwood, logs and timber of the applicant down the river.

It should be mentioned that the water transportation method used by the applicant of running or driving its wood, logs and timber down the Blackwater River is the most economical, and the usual method of transporting wood cut on timber limits, generally speaking, in the Lake Superior District, and elsewhere in the Province of Ontario and in the Province of Quebec.

The use which has been made of the Blackwater River by the applicant since the year 1942, as a means of transportation of its pulpwood and other logs, in connection with its timber operations has already been fully stated. But the river is not capable of use for the purpose of running down or driving loose logs during the whole of the open water season. Such operations can only be successfully carried out when the water is fairly high such as during the spring run off or after periods of heavy rain. There are periods when the water is too low even for such a purpose. There is, however, no evidence to show what use, if any, the waters of the Blackwater River have been put to as a means of navigation, transportation or communication prior to the time mentioned.

The Blackwater River flows in a southwesterly direction and empties into Lake Nipigon. The portion of the river here considered extends from a point opposite mileage 16.4 on the Dorion Subdivision of the railway right-of-way four miles east of Beardmore station to below the last rapids above Lake Nipigon. Beardmore is a little more than four miles above Warneford station near which the two bridges in question are located.

In addition to the oral evidence given on the point, by witnesses called by the parties, there was put in evidence a number of maps showing the portion of the Blackwater River with which we are here more particularly interested and, also, a large number of photographs of various places on the river.

One of the witnesses called for the Railways was Mr. Westcote D. Cassels, a consulting civil engineer, of Ottawa, Canada, a man of long and wide experience in connection with matters pertaining to his profession. Mr. Cassels made an examination of the river at the request of the Railways, and his report was, at the hearing, filed as an exhibit. On this report Mr. Cassels was also fully examined and cross-examined. The examination of the portion of the river mentioned was made by Mr. Cassels in five days from June 12th to June 16th, 1945, both days inclusive, spent on the ground. At this time this witness found the water in the Blackwater River a little lower than he had expected to find it at that season of the year, and his evidence relates to conditions on the river as he found them at the time.

The Lower Blackwater (the portion in question) is a small sinuous river running through a comparatively narrow valley in forest country. The hills bordering the river are of moderate height rising in places almost from the water's edge, while elsewhere they are farther back from the stream.

The narrowest part of the river-bed is about 40 feet wide and there are occasional expanses of a few hundred feet, but, in general, it may be described as being from 60 to 100 feet in width.

The river falls rapidly on its way to Lake Nipigon. The drop is more pronounced west of Warneford station than it is east of that point, that is upstream from the bridges. The total fall of the river between Warneford and Lake Nipigon is 112 feet in approximately 9.7 miles.

There are many rapids and a number of stretches of shallow water on the section under consideration. They vary in length from under 100 feet to almost half a mile.

From mileage 16.4, about four miles above Beardmore, to mileage 26.00 the tracks of the railway follow the river closely, crossing it in four places. From mileage 26.00 (just below Warneford) to mileage 29.00 the track is within half a mile of the river. The railway then leaves the course of the river.

The immediate banks of the river are, in general, somewhat lower east of Warneford station (upstream) than they are west of that point, and there is also more low lying land adjacent to the stream.

The rainfall in the area would appear to have some bearing and I, therefore, give the following as supplied by Mr. Cassels. These figures for rainfall taken at MacDiarmid, some ten miles south and four miles west of Warneford, and which I think would be representative of the area in question, show an average of 27.4 inches over a period of ten years. In 1942, 26.1 inches fell, in 1943, 28.2 inches and in 1944 there was a record peak of 38.6 inches. This peak condition was general in the whole Nipigon Lake watershed. For example at Fort William the fall in 1944 was 37.7 inches. The average at Port Arthur and Fort William over a somewhat earlier period of 30 years was 23.32 inches.

The river above Warneford, near which the two bridges are located, has a drainage area of 275 square miles according to figures given by the Dominion Water and Power Bureau.

No periodic measurements of the flow of the Blackwater River appear to have ever been made. As this has a direct bearing on some aspects of floatability and navigability, Mr. Cassels endeavoured to secure some idea of the average monthly flow of the stream. This he did comparatively by studying the figures of the Matawin near Port Arthur, Ontario. He took that river because it, like the Blackwater, is an uncontrolled stream for which record for the year 1923 to 1944 inclusive was available.

The Matawin has a drainage basin of 990 square miles.

During the 21 years covered by the record the average monthly flow of the Matawin was, in second feet, as follows:—

Oct.	Nov.	Dec.	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.
480	434	337	278	266	312	887	1822	1486	895	536	479

The mean average annual flow being 684 second feet.

Taking the ratio between the drainage basins of the two rivers, and applying it to the above figures gives an indicated monthly flow for the Blackwater as follows:

Oct.	Nov.	Dec.	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.
133	120	93	77	74	87	246	504	411	248	148	133

The mean average annual flow being 189.4 second feet.

These figures for the Blackwater, of course, are not actual figures. But I think that the comparison used does give a fair estimate of the flow of the river.

In view of the nature of the watershed, I think that it can be expected that the Blackwater River rises rapidly after heavy rains and would fall in the same manner, and that the spring freshet would reach a considerable height, particularly when rain increased the run off from the melting snow.

The rapids in the Blackwater River, given by Mr. Cassels and which I accept, as shown in the river at the height of water existing at June 12th to June 16th, 1945, are as follows:—

1. At a point on the river directly north of mileage 16.4 there is a considerable rapid. The lower end of this rapid is a series of falls or chutes having a drop of 12 feet in 200 feet.

2. North of mileage 16.6 the river falls $2\frac{1}{2}$ feet in 20 feet over a series of stone steps.

3. There is a rapid 450 feet long near the westerly end of the Village of Beardmore. It has a fall of $5\frac{1}{2}$ feet.

4. Opposite a point on the railway 165 feet west of Mile 22 there is a short rapid with a drop of somewhat more than a foot in the main section.

5. A few hundred yards further downstream there is another short rapid, over rock ledges, with a drop of some 3 feet.

6. One mile above Warneford there is a small rapid with a drop of $1\frac{1}{2}$ in 100 feet.

7. A few hundred feet below Warneford there is a rapid in which the fall is 14 feet in 1600 feet. The tail end of the sweep was still in this rapid on June 12th, 1945.

8. Commencing approximately half a mile west of Mile 26 on the railway there is a series of rapids and falls some 2,000 feet long. The drop is very pronounced and levels showed that it measured 53 feet. One of the falls had a height of 8 feet or thereabouts.

9. Somewhat further downstream opposite a point between Mile 27 and 28, there is a small rapid. No estimate of the fall could be made but it is not great.

10. Below this rapid there are some miles of more quiet water broken some $3\frac{1}{2}$ miles above the mouth of the river by a rapid which drops 5 feet in a distance of 700 feet. There are three separate chutes at intervals in this rapid.

11. A mile further downstream there is a total drop of 9 feet in 600 feet. This rapid is not only rough but there was a pronounced turn in it.

12. The last rapid before the lake is a small one. It is shallow and the bed is boulder strewn with transverse rock ledges.

In addition to the rapids there are some shallow stretches of fast water. One of these is in the vicinity of the trestles at Mile 24.9 and Mile 25.2.

Like most rivers the height of the immediate banks of the stream varies and the river in periods of high water flow spreads in places over the adjoining land. There is more low lying land above Warneford than below that point.

The bed of the Blackwater River varies markedly in nature at frequent intervals and any stretches of calm water are short above, below and at Warneford. The volume of flow would be irregular; being high during the spring freshets and after protracted heavy rains and low during the major part of the year. There are no expansions of any considerable length in the section under consideration.

As is seen from what has been stated, the rapids are distributed with fair regularity along the length of the stream. Nine of the twelve would seem to form definite obstacles to both navigation and the passage of cribs, rafts, or sacs of logs, as they are shallow, have considerable fall, are crossed by ledges of rock and are frequently crooked. In addition, the Blackwater River itself is so small that it offers quite inadequate space for the assembly and handling of rafts except at the outlet into Lake Nipigon and near Beardmore. On this point Mr. David W. Christie, one of the witnesses called by the applicant, stated,—“Rafting wood on a river like the Blackwater is out of the question. It is not a big enough river to raft on.” There are also shallow stretches of fast water on the river, for example the one between and through the railway trestle bridges immediately above Warneford.

When the water is much higher in the river, as it is on occasions, than at the time of the examination made by the witness, Mr. Cassels, in June, 1945, the rapids, and the rough and shallow water, stand out with less prominence. And, of course, the use that can be made of the river for driving wood and logs or other purposes is always dependent on the height of the water.

We have evidence of some recent limited use of the waters of the river for canoes and some sort of small boat called a pointer, by the applicant in connection with its river driving operations. The pointer is used by the men engaged on the drive, as a means of assisting them in the process of what is described as "sweeping the river". As to use of the river by canoes, we were given two specific instances: In about the first week of August, 1944, when the river was very high due to most heavy rains in the latter part of July, Mr. David William Christie, one of the witnesses for the applicant, took a canoe down the river from the bottom of the rapids at Beardmore to the point where the river empties into Lake Nipigon and found it necessary, on only three occasions, to take the canoe out of the water. During his examination of the river in June 1945, Mr. Cassels used a canoe down the stream starting at Beardmore, but the canoe had to be taken out of the water and carried over a number of difficult points.

The use to which the Blackwater River has been put by the applicant, in recent years, for floating down loose logs has been earlier fully stated. It is amply clear from the evidence that the river is a good river for this purpose.

It is now necessary to consider what jurisdiction, if any, the Board has to deal with the matters of which the applicant complains. The Board has only such powers as are given to it by the express terms of a statute, or by necessary implication therefrom. The Railway Act of 1906 was in force at the time the railways constructed the two bridges. When hereafter I refer to a section, I shall give the number of the section as it appears in the Act of 1906 and indicate in brackets the number of the corresponding section in the present Act.

Section 26 (33) of the Railway Act gives the Board jurisdiction where the railway company has violated, or has failed to comply with, the Railway Act or the Special Act. The applicant alleges that the respondent has violated, or failed to comply with sections 154 (163), 230 (245), 233 (248) and 235 (255) of the Railway Act.

I shall deal first with Section 233 (248), which requires the railway company, before commencing the construction of a bridge across a navigable water, to submit to the Minister of Public Works, for approval by the Governor in Council, a plan and description of the proposed site of the work and a general plan of the work to be constructed; and, further, requires the railway company to apply to the Board for an order authorizing construction of the work. Admittedly these things were not done by the railway company. The question of the applicability of Section 233 (248) depends upon whether the Blackwater River at the points where the two bridges are constructed, is a navigable water. Many authorities were cited to the Board. I have read the judgments in the cases referred to and have been unable to find any principle enunciated therein which would justify me in finding that the Blackwater River is a navigable water at the points in question. I find on the evidence presented that the Blackwater River at these points is not a navigable water within the meaning of Section 233 (248), and hold that this section does not apply to the construction or reconstruction of the bridges in question.

Section 230 (245) prohibits a railway company from causing any obstruction in, or impeding the free navigation of any river over which its railway is carried. The applicant contends that this section applies not only to a river which is navigable in a legal sense, but to any river over which there is a right of way for boats of any description. On the facts as I see them, I do not think it necessary to decide this point. My finding is that the railways have not, by the construction or reconstruction of the bridges in question, caused any obstruction in, or impeded the use of the canoes and other small boats which are the only craft which have used, or could use, the Blackwater River. I am therefore of the opinion that the applicant has not shown any violation of Section 230 (245).

Section 235 (255) of the Railway Act by implication prohibits the railway from being carried upon, along or across any existing highway without leave of the Board. The applicant contends that the Blackwater River is a highway, and it is admitted that leave of the Board was not obtained for the construction of the bridges. I suppose there is no doubt that "highway", used in a wide sense, includes a way over water as well as a way over land. But it is to be noted that the crossing of navigable waters is dealt with specifically by the Railway Act in Sections 230 to 233 (245 to 248), and after considering the provisions of the sections which are included in the heading "Highway Crossings," and the definition of "highway" as given in subsection (11) of Section 2, I am clearly of the opinion that "highway" as used in Section 235 (255) means only a highway over land and does not include a water highway. I therefore hold that Section 235 (255) has not been violated.

I may add that the only evidence of user of the Blackwater River is as to its use by servants of the applicant since 1942, and that notwithstanding the rights conferred by the Lakes and Rivers Improvement Act, R.S.O. 1937, Chapter 45, and preceding legislation, I do not think that the Blackwater River is now or ever has been a highway in any sense of the word.

Section 154 (163) is as follows:—

"The company shall restore, as early as possible, to its former state, any river, stream, watercourse, highway, water pipe, gas-pipe, sewer or drain, or any telegraph, telephone or electric line, wire or pole, which it diverts or alters, or it shall put the same in such a state as not materially to impair the usefulness thereof."

In my opinion the section applies not only where a railway company diverts the course of a river, but also where, by the construction of its works, it changes or alters a river in any way so as materially to impair its usefulness. Under Section 24 of the Lakes and Rivers Improvement Act, R.S.O. 1937, Chapter 45, and preceding legislation, all persons have, and have had since the early days of the province, the right to float logs down all rivers, creeks and streams during the spring and autumn freshets. It is true that at the time the bridges were constructed there were no lumbering operations on the river. But my view is that the word "usefulness" as used in the section includes potential usefulness. I therefore find that the railway has violated the provisions of the section.

To what extent have the railways by their works impaired the usefulness of the Blackwater River for the floating of loose logs? As earlier stated, it is clear that the bridges act as an obstruction to the passage of pulpwood, logs and timber of the applicant down the river. The effect of the lower bridge at mileage 25.2, in this respect, is more serious than in the case of the upper bridge at mileage 24.9.

In my view there is an obligation on the part of the applicant to take reasonable measures by means of booms or other works to control the flow of the logs. The applicant has not, of course, a paramount or exclusive right to the use of the river for the passage of its logs. There must be some accommodation of interests, and it seems to me that it is an abnormal and unreasonable use of the river to run great masses of logs without some degree of control.

I find, however, that the construction and reconstruction of the bridges materially impaired the usefulness of the river. There remains for consideration what action the Board should take under the circumstances.

The applicant was not prepared to suggest what size of an opening under either of the bridges would be necessary, or what other or additional remedy might be applied to reasonably satisfy its complaint.

On the evidence before us I find it impossible to say, in precise terms, what alterations in the bridges the railways should be required to make.

My understanding is that the primary interest of the parties to this application is to obtain the Board's decision as to whether the railway company has violated the provisions of the Railway Act. That decision has been given. I hope that the parties can now come to an agreement as to what changes the railway company should make in the bridges. If they reach an agreement, and it is approved by the Board, the Board will incorporate the terms of the agreement in an order. If they fail to reach an agreement, the Board will, on the application of either party, direct its Chief Engineer to inspect the bridges and make a report, and will then make an order specifying the changes to be made.

One point which I have not dealt with relates to a question of title. The applicant contends that the railway has no title to the bed of those parts of the Blackwater River over which the bridges are constructed. Generally speaking, it is not the function of the Board to decide questions of title; such matters are for the provincial courts. In the present case the applicant bases its claim for relief on the allegation that the railway has violated or not complied with the sections of the Railway Act above referred to. In the case of none of these sections does the answer to the question whether it has been violated, or not complied with depend, in my opinion, on whether the railway company owns the bed of the river. For these reasons I do not think it necessary or proper to decide the question of title above referred to.

Dated Ottawa, October 3rd, 1945.

J. A. CROSS

I concur

HUGH WARDROPE

J. A. STONEMAN.

Application of The Bell Telephone Company of Canada for an Order, under Section 373 (3) and all other relevant sections of the Railway Act, for authority to construct, erect and maintain its line or lines of telephone (buried cable) across and under certain public highways or road allowances within the corporate limits and under the municipal jurisdiction of the County of Middlesex, as set forth and described in the application; and questions relating to terms and conditions as reserved by paragraph 2 of Order No. 66276, dated the 23rd day of July, 1945.

File No. 44484

JUDGMENT

BY THE BOARD:

By Order No. 66276, dated July 23, 1945, the Board authorized The Bell Telephone Company of Canada (hereinafter referred to as "the company") to construct, erect and maintain its line or lines of telephone (buried cable) across and under certain highways or road allowances in the County of Middlesex, as in the said Order set out. Paragraph 2 of the Order provides that "all questions relating to terms and conditions in respect of this application and the works hereby authorized be, and they are hereby, reserved for further consideration and order of the Board."

Both the County of Middlesex (hereinafter referred to as "the municipality") and the company take the position that no public hearing is necessary, and the Board will therefore now proceed to consider the questions relating to terms and conditions.

The company has suggested that the Board issue a supplementary order disposing of the reservation contained in paragraph 2 of Order No. 66276 by stating that the terms and conditions are to be those contained in certain statutory provisions. The Board does not consider it necessary to include any such provision in an order. The company must in any case comply with statutory terms and conditions applicable to the works authorized by Order No. 66276.

Mr. W. D. J. Moss, Solicitor for the municipality, said in his letter to the Board of August 14, 1945: "I cannot see why any sort of a hearing is necessary. The sole question was whether in event of any changes in the road crossing by the Bell Telephone cable made in the future by the County, the Telephone Company should pay the whole or any part of the cost."

The letter of Mr. Moss raises a question of considerable importance. Order No. 66276 authorizes the company to construct its lines across and under certain highways in the municipality. What will be the position of the municipality if at some time in the future the municipality wishes the company to make some change in the location of any of the works authorized by Order No. 66276? In the absence of any condition imposed by the Board under subsection 4 of Section 373 of the Railway Act, it appears that the municipality would have no remedy. Subsection 6 of Section 373 confers power on the Board to order (*inter alia*) a change in the location of a telephone line, but subsection 6 applies only to lines in a city or town. The Board's view is that Parliament, in giving the Board power to impose "terms, conditions or limitations," intended the Board to accommodate the interests of the company and the municipality in a practical common sense way; and the Board deems it "expedient, having due regard to all proper interests," that in the present case the following term, condition and limitation be imposed by order:—

"If, from time to time, in order to enable the municipality to construct, reconstruct, alter or repair a highway, waterpipe line, sewer or other work of the municipality, the municipality requests the company to change the location of any of the works authorized by Order No. 66276, and the company does not agree to make such change, or does not agree to make such change otherwise than upon terms or conditions unacceptable to the municipality, the municipality may apply to the Board for an order or orders directing the company to make such change; and if upon such application or applications the Board deems it expedient, having due regard to all proper interests, that the location of any of the works in question should be changed, the company shall make such changes in the location of the works in question as the Board may direct; and the municipality and the company shall each pay such part of the cost of changing the location of the works as the Board may direct."

In some other applications of a similar kind which have come before the Board recently, the company has contended that the Board has no power to make such a provision as is above set out, and this contention merits consideration. Subsection 4 is very wide. But the suggestion is that the provisions of subsection 6 by implication cut down or restrict the meaning of subsection 4 and have the effect of denying the Board the power to impose terms, conditions or limitations as to future changes of location of telephone lines in municipalities other than towns and cities. The Board does not agree that such is the effect of subsection 6. The subsection applies to (*inter alia*) lines which are already in

existence, and applies whether they were constructed under the authority of the Board or not. In view of the broad terms of subsection 4, the Board is unable to see that any inference should be drawn from subsection 6 that the Board, in authorizing the construction of a new line in a rural municipality, has no power to safeguard its interests by such a provision as is above set out.

An order will go accordingly.

J. A. CROSS.
HUGH WARDROPE.
A. SYLVESTRE.
J. A. STONEMAN.
G. A. STONE.
F. M. MACPHERSON.

October 4, 1945.

ORDER No. 66533

In the matter of the Order of the Board No. 66276, dated July 23, 1945, authorizing the Bell Telephone Company of Canada, hereinafter called the "company", to construct, erect and maintain its line or lines of telephone (buried cable) across and under certain highways or road allowances in the County of Middlesex; and in the matter of paragraph numbered 2 of the said Order whereby it was provided that all questions relating to terms and conditions in respect of the application and the works by the said Order authorized were reserved for further consideration and order of the Board.

File No. 44484

THURSDAY, the 4th day of October, A.D. 1945

J. A. CROSS, K.C., *Chief Commissioner.*
HUGH WARDROPE, *Asst. Chief Commissioner.*
A. SYLVESTRE, K.C., *Deputy Chief Commissioner.*
J. A. STONEMAN, *Commissioner.*
G. A. STONE, *Commissioner.*
F. M. MACPHERSON, *Commissioner.*

Upon reading the submissions of the company and the County of Middlesex, hereinafter referred to as "the municipality"—

It is ordered: That the authority granted to the company by Order No. 66276 to construct, erect and maintain the works in the said Order set out shall be subject to the following term, condition and limitation:

If, from time to time, in order to enable the municipality to construct, reconstruct, alter or repair a highway, waterpipe line, sewer or other work of the municipality, the municipality requests the company to change the location of any of the works authorized by Order No. 66276 and the company does not agree to make such change, or does not agree to make such change otherwise than upon terms and conditions unacceptable to the municipality, the municipality may apply to the Board for an order or orders directing the company to make such change; and if, upon such application or applications, the Board deems it expedient, having due regard to all proper interests, that the location of any of the works in question should be changed, the company shall make such changes in the location of the works in question as the Board may direct; and the municipality and the company shall each pay such part of the cost of changing the location of the works as the Board may direct.

J. A. CROSS,
Chief Commissioner.

In the matter of the application of The Bell Telephone Company of Canada for Order under Section 373 (3) and all other relevant sections of the Railway Act, for leave to exercise its statutory powers to construct, erect and maintain its line or lines of telephone along, across and under certain highways or road allowances in the Township of London, in the County of Middlesex and Province of Ontario;

And in the matter of Board's Order No. 66277, dated July 23rd, 1945, made pursuant to the said application;

And in the matter of the application of the Township of London to vary or amend the said order;

And consideration of all questions relating to terms and conditions in respect to the said application and the works by the said Order authorized.

File No. 44484.1

JUDGMENT ON REVIEW

Cross, Chief Commissioner:—

At the conclusion of the hearing of this case, in London, Ontario, on August 31st, 1945, I delivered judgment, which was concurred in by Mr. Sylvestre, Deputy Chief Commissioner, and Mr. Commissioner Stone, and, among other things, refused the request of the Township of London, hereinafter referred to as the "Township", to have two certain terms and conditions imposed, and, at the same time, said that I did not think that any other conditions should be imposed.

The first of the terms or conditions proposed by the Township was that the Board should now lay down the apportionment of the cost of moving and altering the telephone conduits to meet future requirements of the Township.

In respect to this proposed condition it was stated:—

"In regard to the first condition suggested by the Township, I do not think the Board should, at this time, attempt to lay down how the costs of moving and altering the conduits and works of the company to meet future requirements of the township in respect to road improvements and alterations or other municipal works should be made. Should such necessity arise in the future the Board will then decide whether, under all the circumstances present at the time, there should be any apportionment of the costs of such works upon application made to the Board for such purpose."

It was thus assumed that the Township would have the right to apply to the Board at any time. Subsequently, it came to our notice that subsection 6 of Section 373 of the Railway Act applies only to cities and towns, and that because of this, its provisions were not available to the township.

Order No. 66277, dated July 23rd, 1945, authorized the company to construct its lines across and under certain highways and road allowances in the Township. The question arises as to what will be the position of the Township if at some future time the Township wishes the company to make some change in the location of any of the works authorized by Order No. 66277.

The Board, accordingly, decided to review its previous decision.

In the absence of any condition imposed by the Board under subsection 4 of Section 373 of the Railway Act, it appears that the Township would have no remedy.

A like question has recently been before the full Board in the case of Bell Telephone Company of Canada Limited and the County of Middlesex. In that case the Board, in its judgment, dated October 4th, 1945, said, in part, as follows:—

“The Board’s view is that Parliament, in giving the Board power to impose ‘terms, conditions or limitations,’ intended the Board to accommodate the interests of the company and the municipality in a practical common sense way; and the Board deems it ‘expedient, having due regard to all proper interests,’ that in the present case the following term, condition and limitation be imposed by order:

‘If, from time to time, in order to enable the municipality to construct, reconstruct, alter or repair a highway, waterpipe line, sewer or other work of the municipality, the municipality requests the company to change the location of any of the works authorized by Order No. 66276, and the company does not agree to make such change, or does not agree to make such change otherwise than upon terms or conditions unacceptable to the municipality, the municipality may apply to the Board for an order or orders directing the company to make such change; and if upon such application or applications the Board deems it expedient, having due regard to all proper interests, that the location of any of the works in question should be changed, the company shall make such changes in the location of the works in question as the Board may direct; and the municipality and the company shall each pay such part of the cost of changing the location of the works as the Board may direct.’”

Following the decision of the Board in The Bell Telephone Company of Canada and the County of Middlesex referred to above I deem it “expedient, having regard to all proper interests,” that in this present case the following term, condition and limitation be imposed by order:—

“If, from time to time, in order to enable the Township to construct, reconstruct, alter or repair a highway waterpipe line, sewer, or other work of the Township, the Township requests the company to change the location of any of the works authorized by Order No. 66277, and the company does not agree to make such change, or does not agree to make such change otherwise than upon terms or conditions unacceptable to the Township, the Township may apply to the Board for an order or orders directing the company to make such change; and if upon such application or applications the Board deems it expedient, having due regard to all proper interests, that the location of any of the works in question should be changed, the company shall make such changes in the location of the works in question as the Board may direct; and the Township and the company shall each pay such part of the cost of changing the location of the works as the Board may direct.”

The decision of the Board, dated August 31st, 1945, will be varied accordingly and order to go accordingly.

October 5, 1945.

J. A. CROSS.

I concur

A. SYLVESTRE

G. A. STONE

ORDER No. 66537

In the matter of the Order of the Board No. 66277, dated July 23, 1945, authorizing the Bell Telephone Company of Canada, hereinafter called the "company", to construct, erect and maintain its line or lines of telephone along, across and under certain highways or road allowances in the Township of London, in the County of Middlesex and Province of Ontario; and in the matter of paragraph numbered 2 of the said Order whereby it was provided that all questions relating to terms and conditions in respect of the application and the works by the said Order authorized were reserved for further consideration and order of the Board.

File No. 44484.1

SATURDAY, the 6th day of October, A.D. 1945

J. A. CROSS, K.C., *Chief Commissioner.*

A. SYLVESTRE, K.C., *Deputy Chief Commissioner.*

G. A. STONE, *Commissioner.*

Upon hearing the matter at the sittings of the Board held in London, Ontario, on the 30th day of August, 1945, in the presence of Counsel for the company and the Township of London, hereinafter called the "municipality", and what was alleged—

It is ordered:

1. That the said Order No. 66277 be, and it is hereby, amended
 - (a) by reducing to 798.5 feet the maximum elevation of the conduit system between stakes 14 plus 50 and 19 plus 34, according to Plan 205-2 on file with the Board under file No. 44484.1 and referred to in Order No. 66277, thus placing the conduit 4.5 feet below the present road level; and
 - (b) by reducing to elevation 820 the duct line between stakes 60 plus 34 and 64, according to Plan 205-8 on file with the Board under file No. 44484.1 and referred to in said Order No. 66277, thus placing the conduit system 4.5 feet below the road level at the crest of the hill.

2. That the authority granted to the company by Order No. 66277 to construct, erect and maintain the works in the said Order set out shall be subject to the following term, condition and limitation:

If, from time to time, in order to enable the municipality to construct, reconstruct, alter or repair a highway, waterpipe line, sewer or other work of the municipality, the municipality request the company to change the location of any of the works authorized by Order No. 66277 and the company does not agree to make such change, or does not agree to make such change otherwise than upon terms and conditions unacceptable to the municipality, the municipality may apply to the Board for an order or orders directing the company to make such change; and if, upon such application or applications, the Board deems it expedient, having due regard to all proper interests, that the location of any of the works in question should be changed, the company shall make such changes in the location of the works in question as the Board may direct; and the municipality and the company shall each pay such part of the cost of changing the location of the works as the Board may direct.

J. A. CROSS,
Chief Commissioner.

Summary of Orders Issued by the Board

- 66518 Sept. 28.—Approving location of pipe lines, etc., of the Edward Oil & Rubber Co. near C.P.R. tracks at Sudbury, Ont.
- 66519 Sept. 28.—Approving location of pipe lines, etc., of McColl-Frontenac Oil Co. Limited near C.N.R. tracks at Seaforth, Ont.
- 66520 Sept. 28.—Approving location of pipe lines, etc., of McColl-Frontenac Oil Co. Limited near C.N.R. tracks at Petrolia, Ont.
- 66521 Sept. 29.—Authorizing C.P.R. to construct business siding at grade across St. Joseph Street, Henry Street and the prolongation of St. James Street in the Cadastral Incorporated Village of Buckingham, Civic Town of Buckingham, Que., at mileage 3:30 Buckingham Subd.
- 66522 Sept. 29.—Approving location of pipe lines, etc., of McColl-Frontenac Oil Co. Limited near C.P.R. tracks at Rosetown, Sask.
- 66523 Oct. 2.—Approving location of pipe lines, etc., of the British American Oil Company, Limited, near C.N.R. tracks at Lloydminster, Alta.
- 66524 Oct. 2.—Approving location of pipe lines, etc., of North Star Oil Limited near C.N.R. tracks at Mundare, Alta.
- 66525 Oct. 2.—Approving location of pipe lines, etc., of Imperial Oil Limited near C.N.R. tracks at Paradise Hill, Sask.
- 66526 Oct. 2.—Approving location of pipe lines, etc., of Imperial Oil Limited near C.N.R. tracks at Zenon Park, Sask.
- 66527 Oct. 2.—Declaring C.N.R. crossing of highway first public crossing just east of St. Edouard Station, Que., protected to Board's satisfaction.
- 66528 Oct. 2.—Declaring C.P.R. crossing of Highway No. 11 being first north of Ste. Agathe Station, Que., protected to Board's satisfaction.
- 66529 Oct. 3.—Approving location and details of C.N.Rys. proposed station at Ste. Julie, Que.
- 66530 Oct. 3.—Declaring C.N.R. crossing of Station Street in the Village of Bancroft, Ont., protected to Board's satisfaction.
- 66531 Oct. 4.—Authorizing C.P.R. and Great Northern Railway Co. to construct a branch line of railway at Fraser Mills, B.C.
- 66532 Oct. 3.—Authorizing Dept. of Highways for the Province of Ontario to remove steps leading from the highway to C.P.R. Co's station at Puslinch, Ont.
- 66533 Oct. 4.—Authorizing the Bell Telephone Company of Canada to construct, erect and maintain its line or lines of telephone across and under certain highways or road allowances in the County of Middlesex, Ont.
- 66534 Oct. 4.—Approving clearances at siding serving United Cannery Limited, Wellington, Ont.
- 66535 Oct. 5.—Approving location and layout of C.N.Rys. portable shelter to be erected at Whitechurch, Ont.
- 66536 Oct. 5.—Declaring C.N.R. crossing of highway first west of station platform at Craig's Road Station, mileage 6 Danville Subd., Que., protected to Board's satisfaction.
- 66537 Oct. 6.—Amending Order No. 66277, dated July 23, 1945, which authorized the Bell Telephone Company of Canada to construct, etc., its line or lines of telephone along, across and under certain highways or road allowances in the Twp. of London, County of Middlesex, Ont.
- 66538 Oct. 6.—Authorizing the Bell Telephone Company of Canada to construct and erect its line or lines of telephone across, along and under certain highways or road allowances in the Twp. of Dover, in the County of Kent, Ont.
- 66539 Oct. 6.—Authorizing the Bell Telephone Company of Canada to construct and erect its line or lines of telephone across, and under certain highways or road allowances within the corporate limits and under the municipal jurisdiction of the Twp. of Tilbury East, Ont.
- 66540 Oct. 6.—Authorizing the Bell Telephone Company of Canada to construct and erect its line or lines of telephone across and under certain public highways or road allowances within the corporate limits and under the municipal jurisdiction of the County of Kent, Ont.
- 66541 Oct. 6.—Authorizing the Bell Telephone Company of Canada to construct and erect its line or lines of telephone across, along and under certain public highways or road allowances within the corporate limits and under the municipal jurisdiction of the Twp. of Chatham, in the County of Kent, Ont.

- 66542 Oct. 6.—Declaring C.P.R. crossing of the highway four poles west of Mile 72·1 Carberry Subd., Man., protected to Board's satisfaction.
- 66543 Oct. 5.—Relieving the C.P.R. from maintaining a station agent at Courval, Sask., from the 15th day of Oct., 1945, to the 31st day of December, 1945.
- 66544 Oct. 6.—Approving under Maritime Freight Rates Act tolls published in tariffs filed by the Canadian Freight Association under Secs. 3 and 9.
- 66545 Oct. 6.—Approving under Maritime Freight Rates Act tolls published in tariffs filed by the Canadian Freight Association under Secs. 3 and 9.
- 66546 Oct. 6.—Approving under Maritime Freight Rates Act tolls published in tariffs filed by the C.P.R. under Sec. 9.
- 66547 Oct. 10.—Approving relocation of pipe lines, etc., of McColl-Frontenac Oil Company Limited near C.N.R. tracks at Neepawa, Man.
- 66548 Oct. 10.—Approving relocation of pipe lines, etc., of McColl-Frontenac Oil Company, Limited, near C.N.R. tracks at St. Felicien, Que.
- 66549 Oct. 10.—Declaring C.N.R. crossing of St. Ambrose Street in the City of Montreal, Que., mileage 2·94 Cornwall Subd., protected to Board's satisfaction.
- 66550 Oct. 10.—Approving Supplement No. 1, dated May 16, 1945, to service station contract between the Bell Telephone Company of Canada and La Cie de Telephone Grande Riviere du Loup.
- 66551 Oct. 10.—Approving installation of pipe lines, etc., of Imperial Oil Limited near C.P.R. tracks at Red Deer, Alta.
- 66552 Oct. 10.—Approving Supplement No. 2, dated May 28, 1945, to Traffic Agreement, dated March 8, 1938, between the Bell Telephone Company of Canada and the Byron Telephone Company Limited.
- 66553 Oct. 11.—Declaring C.N.R. crossing of the highway second crossing immediately north of Atherley, Ont., mileage 90·2 Newmarket Subd. protected to Board's satisfaction.
- 66554 Oct. 11.—Declaring C.N.R. crossing of highway in the northwest quarter of Section 8, Twp. 51, Rge 19, West of the Fourth Meridian, mileage 91·04 Viking Subd. protected to Board's satisfaction.
- 66555 Oct. 11.—Declaring Niagara, St. Catharines and Toronto Railway crossing of highway 8·45 miles from St. Catharines, at Stop 63, in Province of Ont., Falls Subd., protected to Board's satisfaction.
- 66556 Oct. 11.—Declaring C.P.R. crossing of Boyne Street first immediately east of station at Treherne, Man., mileage 75·1 Glenboro Subd., protected to Board's satisfaction.
- 66557 Oct. 12.—Authorizing the C.N.R. to construct spur to serve Bradford Co-operative Storage Limited, across Given Road, Village of Bradford, Ont.
- 66558 Oct. 12.—Authorizing the C.N.R. to operate their trains through interlocking plant at crossing with the Hamilton Street Railway on Kenilworth Ave., Hamilton, Ont., and authorizing Hamilton Street Railway Co. to operate its street cars through said interlocking plant.
- 66559 Oct. 12.—Authorizing C.P.R. to construct extension to passing siding at grade across road between Lot 22, Con. 2, Twp. of Tilbury North, County of Essex, and Lot 16, Con. 3, Twp. of Tilbury East, County of Kent, Ont., at mileage 79·84 Windsor Subd.
- 66560 Oct. 13.—Approving installation of pipe lines, etc., of McColl-Frontenac Oil Company Limited near C.N.R. tracks at Aurora, Ont.
- 66561 Oct. 13.—Approving location of pipe lines, etc., of Imperial Oil Limited near C.N.R. tracks at Kelvington, Sask.
- 66562 Oct. 13.—Approving location of pipe lines, etc., of Imperial Oil Limited near C.P.R. tracks at Robsart, Sask.
- 66563 Oct. 15.—Declaring C.N.R. crossing of highway in the Town of Lloydminster, Sask., mileage 84·31 Blackfoot Subd., protected to Board's satisfaction; present speed limitation of ten miles per hour to be maintained.
- 66564 Oct. 13.—Declaring Niagara, St. Catharines and Toronto Railway crossing of Stanley Street at Niagara Falls, Ont., mileage 11·06 Main Line Subd., protected to Board's satisfaction.
- 66565 Oct. 15.—Approving under Maritime Freight Rates Act tolls published in tariffs filed by C.N.R. under Sec. 3.
- 66566 Oct. 15.—Extending time within which C.N.R. were required to install two automatic flashing light signals and one bell at the crossing of St. Athanase highway first crossing east of St. Pascal Station, Que.
- 66567 Oct. 15.—Extending time within which C.N.R. were required to install two flashing lights and one bell at the crossing of the Jonquieres-Arvida Highway north of Chauvigny Yard, Town of St. Dominique de Jonquiere, Que.

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The Board of Transport Commissioners for Canada

Judgments, Orders, Regulations and Rulings

Vol. XXXV

Ottawa, November 15, 1945

No. 16

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Application of the Township of Brantford, in the Province of Ontario, for an order directing the installation of additional protection at Toll Gate Road crossing, on the Canadian National Railways, two miles west of the City of Brantford, at mileage 24.98 Dundas Subdivision, London Division; and apportioning the cost of construction and maintenance of such protection.

File No. 9437.1223

JUDGMENT

SYLVESTRE, Deputy Chief Commissioner:

This is an application of the Municipality of the Township of Brantford, Province of Ontario, for the installation of additional protection at the crossing of the Canadian National Railways located two miles west of the City of Brantford, mileage 24.98 Dundas Subdivision, London Division.

This application was heard by the Board at Brantford on the 27th June, 1945.

It appears from the evidence that there is considerable traffic at this crossing, which traffic is likely to increase with future developments. In the present circumstances, this crossing is dangerous due to obstructed lines of vision.

Therefore I would direct that improvements be made, which have been estimated to cost approximately \$2,280, as shown in detail on plan filed by the Canadian National Railways, No. F-371 dated August 13, 1945, and sight lines established as indicated in red on the said plan. Forty per cent of the cost of the work, not exceeding the sum of \$912 will be paid out of the Railway Grade Crossing Fund; the remainder of the cost to be borne and paid sixty per cent by the Railway Company and forty per cent by the Municipality.

An Order to issue accordingly.

The Township has shown a commendable spirit of co-operation in this matter, and I would suggest to the Township that it install a checkerboard facing the north end of Ava Road and place warning signs on Concession Road, on the southwest side, about 200 feet from the crossing, and near Highway No. 2, on the northwest side.

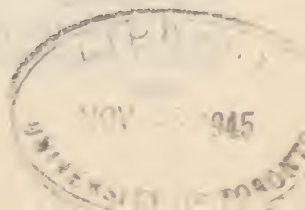
Ottawa, October 5, 1945.

A. SYLVESTRE.

I concur,

J. A. CROSS.

J. A. STONEMAN.



ORDER No. 66580

In the matter of the application of the Township of Brantford, in the Province of Ontario, for an Order directing the installation of additional protection at Toll Gate Road crossing, on the Canadian National Railways, two miles west of the City of Brantford, at mileage 24.98 Dundas Subdivision, London Division, and apportioning the cost of construction and maintenance of such protection.

File No. 9437.1223

WEDNESDAY, the 17th day of October, A.D. 1945.

A. SYLVESTRE, K.C., *Deputy Chief Commissioner.*J. A. STONEMAN, *Commissioner.*F. M. MACPHERSON, *Commissioner.*

Upon hearing the application at the sittings of the Board held at Brantford on June 27, 1945, in the presence of Counsel for the Canadian National Railways, and Counsel and representatives for the Township of Brantford, and what was alleged—

It is ordered:

1. That the Canadian National Railways make improvements, as shown in detail on plan No. F-371 filed by the Canadian National Railways, dated August 13, 1945, and establish sight lines as indicated in red on the said plan on file with the Board under file No. 9437.1223.

2. That forty per cent of the cost of the work, not exceeding the sum of \$912, be paid out of the Railway Grade Crossing Fund; the remainder of the cost to be borne and paid sixty per cent by the Canadian National Railways and forty per cent by the Municipality of the Township of Brantford.

A. SYLVESTRE,

Deputy Chief Commissioner.

GENERAL ORDER No. 673

In the matter of the application of The Express Traffic Association of Canada on behalf of the express companies subject to the jurisdiction of the Board, for approval of proposed Regulations for the Transportation by Express of Acids, Compressed Gases, Inflammables, Oxidizing Substances, Explosives, etc., and Specifications for Shipping Containers, under Sections 349 and 350 of the Railway Act.

File No. 1717.12

TUESDAY, the 23rd day of October, A.D. 1945.

A. SYLVESTRE, K.C., *Deputy Chief Commissioner.*J. A. STONEMAN, *Commissioner.*F. M. MACPHERSON, *Commissioner.*

Upon the report and recommendation of the Director of Operation of the Board—

It is ordered:

1. That the proposed Regulations for the Transportation by Express of Acids, Compressed Gases, Inflammables, Oxidizing Substances, Explosives, etc.,

and Specifications for Shipping Containers, to be observed by express companies subject to the jurisdiction of the Board, on file with the Board under file No. 1717.12, marked "B" and certified by the Secretary of the Board, be, and they are hereby, approved.

2. That the following Orders be and they are hereby rescinded, namely:—
General Orders Nos. 296, 625, 626, 629, 631, 634, 635, 636, 637, 642, 647, 649,
650, 659, 660, 668, 672;

and Orders Nos. 31005, 31749, 34963, 36976, 37087, 37487, 39974, 40842, 42746,
43156, 43261, 43663, 46478, 47286, 47598, 48202, 49315, 50229,
50917, 52826, 53325, 53724, 54633, 59162, 60547, 60913, 60914.

A. SYLVESTRE,
Deputy Chief Commissioner.

SUMMARY OF ORDERS ISSUED BY THE BOARD

- 66568 Oct. 16—Authorizing C.N.R. to construct their railway across St. Peter Street, Quebec, P.Q.
- 66569 Oct. 16—Approving plan showing changes in bridge over tracks of C.P.R. on Nelson Street, Sudbury, Ont.
- 66570 Oct. 15—Amending Order No. 66589 dated September 18, 1945, approving location of pipe lines, etc., of Shell Oil Company of British Columbia Ltd. near C.N.R. tracks at Hope, B.C.
- 66571 Oct. 16—Relieving C.P.R. from maintaining cattle guards at highway crossing in Lot 11, Con. 3, Neelon Twp., Ont.
- 66572 Oct. 13—Authorizing C.P.R. to remove station building at Nicola, B.C.
- 66573—Oct. 16—Approving location of pipe lines, etc., of Imperial Oil Limited near C.P.R. tracks at Brooks, Alta.
- 66574 Oct. 16—Approving location of pipe lines, etc., of Imperial Oil Limited near C.N.R. tracks at Chester, N.S.
- 66575 Oct. 16—Declaring C.N.R. crossing of highway second immediately east of station at Mallorytown, Ont. mileage 137.25 Gananoque Subd. protected to Board's satisfaction.
- 66576 Oct. 16—Approving location and details of C.N.Rys' new station at Nouvelle and transfer of part of existing station to Nouvelle West, P.Q.
- 66577 Oct. 17—Approving location of warehouse of Imperial Oil Limited near C.P.R. tracks at Cremona, Alta.
- 66578 Oct. 17—Approving location of pipe lines, etc., of Imperial Oil Limited near Northern Alberta Railway Company tracks at Wembley, Alta.
- 66579 Oct. 17—Approving location of pipe lines, etc., of Imperial Oil Limited near C.N.R. tracks at St. Paul, Alta.
- 66580 Oct. 17—Authorizing the C.N.R. to make improvements at Toll Gate Road crossing, two miles west of City of Brantford, at mileage 24.98 Dundas Subd., London Division, Ont.
- 66581 Oct. 17—Approving plan showing changes in circuit operating automatic bell and wigwag signals at Yale Road crossing, Hope, B.C.
- 66582 Oct. 17—Approving Supplement No. 2, dated Sept. 12, 1945, to Agreement between the Bell Telephone Company of Canada and the Manila Union Telephone Company Limited, dated April 20, 1938.
- 66583 Oct. 18—Declaring C.N.R. crossing of highway 1.72 miles east of Stouffville Station, Ont., mileage 38.96 Uxbridge Subd., protected to Board's satisfaction.
- 66584 Oct. 18—Approving location of pipe lines, etc., of North Star Oil Limited near C.N.R. tracks at Rainy River, Ont.
- 66585 Oct. 17—Approving relocation of pipe lines, etc., of Imperial Oil Limited near C.P.R. tracks at Acme, Alta.
- 66586 Oct. 18—Rescinding Order No. 66344, dated August 9, 1945, authorizing C.P.R. to construct branch line of railway to serve Schultz Tile and Gravel Company, Town of Durham, Ont.
- 66587 Oct. 18—Declaring C.N.R. crossing of highway near Prevel Station, Que., mileage 90.89 Chandler Subd., protected to Board's satisfaction.
- 66588 Oct. 19—Approving under Maritime Freight Rates Act tolls published in tariffs filed by the Temiscouata Railway Co. under Sec. 9.
- 66589 Oct. 19—Declaring Dominion Atlantic Railway crossing of Aldershot Road, at Aldershot, N.S., mileage 1.6 Kingsport Subd., protected to Board's satisfaction.
- 66590 Oct. 19—Declaring C.N.R. crossing of Parent Road, at Bic, P.Q., mileage 26.02 Rimouski Subd., protected to Board's satisfaction.
- 66591 Oct. 19—Declaring Dominion Atlantic Railway crossing of highway at Wilmot, N.S., mileage 28.23 Kentville Subd., protected to Board's satisfaction.
- 66592 Oct. 19—Declaring C.N.R. crossing of Craig's Road just east of St. Nicholas Station, Que., mileage 12.63 Drummondville Subd., protected to Board's satisfaction.

- 66593 Oct. 18—Approving location of pipe lines, etc., of Imperial Oil Limited near C.N.R. tracks at Speers, Sask.
- 66594 Oct. 19—Approving location of pipe lines, etc., of Imperial Oil Limited near C.N.R. tracks at St. Walburg, Sask.
- 66595 Oct. 19—Declaring C.N.R. crossing of Centre Street at Midland, Ont., mileage 74.44 Midland Subd., protected to Board's satisfaction.
- 66596 Oct. 19—Declaring C.N.R. crossing of Main Street at Ridgeway, Ont., mileage 9.03 Dunnville Subd., protected to Board's satisfaction.
- 66597 Oct. 20—Authorizing Montreal Tramways Co. to operate its cars through interlocking at Turcot East, Que.
- 66598 Oct. 20—Approving under Maritime Freight Rates Act tolls published in tariffs filed by C.N.R. under Sec. 3.
- 66599 Oct. 22—Authorizing C.P.R. to construct branch lines of railway in Parcels 2 and 3, NE $\frac{1}{4}$ of Sec. 6, Twp. 11, Rge 12, W.P.M., at Sidney, Man., mileage 93.4 Carberry Subd.
- 66600 Oct. 22—Authorizing C.N.R. to carry out changes to interlocking plant at interlocked crossing of their Touchwood Subd. and the C.P.R. Company's Pheasant Hills Branch Nokomis, Sask.
- 66601 Oct. 23—Authorizing C.N.R. to construct proposed siding across Ouimet Street and St. Joseph Street, St. Laurent, P.Q., to serve Industrial Glass Works Co. Limited.
- 66602 Oct. 24—Declaring C.N.R. crossing of Provincial Highway No. 20 at mileage 5.25 about 2 $\frac{3}{4}$ miles west of Stamford, Ont., Welland Subd., protected to Board's satisfaction.
- 66603 Oct. 24—Declaring C.N.R. crossing of Kalar Road at mileage 3.87 about 1 $\frac{1}{4}$ miles west of Stamford, Ont., Welland Subd., protected to Board's satisfaction.
- 66604 Oct. 24—Declaring C.P.R. crossing of highway first south of Lang Station, Sask., mileage 55.15, Portal Subd., protected to Board's satisfaction.
- 66605 Oct. 24—Approving plan showing C.P.R.Co's Standard Bridge Warning equipped with cord danglers.
- 66606 Oct. 25—Authorizing C.N.R. to carry out the change in interlocking plant at crossing of C.P.R. and C.N.Rys. at Yorkton, Sask.
- 66607 Oct. 25—Declaring C.P.R. crossing of Pasqua Street, Regina, Sask., mileage 93.93, Indian Head Subd., protected to Board's satisfaction.
- 66608 Oct. 26—Approving installation of pipe lines, etc., of North Star Oil Limited near C.N.Rys. track at Alvena, Sask.
- 66609 Oct. 26—Approving installation of pipe lines, etc., of British American Oil Company, Limited near tracks of C.N.R. at Yorkton, Sask.
- 66610 Oct. 26—Approving installation of pipe lines, etc., of Shell Oil Company of British Columbia, Ltd., near C.P.R. tracks at Grand Forks, B.C.
- 66611 Oct. 26—Approving installation of pipe lines, etc., of Wilton Co-Operative Association, Limited, near C.N.R. tracks at Lashburn, Sask.
- 66612 Oct. 26—Declaring C.P.R. crossing of highway first east of station at Rosemere, Que., mileage 17.91 Park Avenue Subd., protected to Board's satisfaction.
- 66613 Oct. 26—Approving revised Appendix "A", dated Oct. 2, 1945, to Traffic Agreement between the Bell Telephone Company of Canada and La Cie de Telephone de La Tuque Falls, dated December 8, 1937.
- 66614 Oct. 31—Authorizing C.N.R. to construct a siding to serve National Grocers Company, Limited, along and across Manchester Street, town of Mimico, Ont.
- 66615 Oct. 30—Declaring Quebec Central Railway crossing of highway first public crossing south of Leeds Station, Que., mileage 78.5 Quebec Subd., protected to Board's satisfaction.
- 66616 Oct. 30—Declaring Michigan Central Railroad crossing of Main Street, Comber, Ont., mileage NF 195.91 Main Line Subd., protected to Board's satisfaction.
- 66617 Oct. 30—Declaring Michigan Central Railroad crossing of Provincial Highway No. 3 about three and one-half miles east of Canfield Junction, Ont., mileage NF 35.52 Main Line Subd., protected to Board's satisfaction.

- 66618 Oct. 30—Declaring Michigan Central Railroad crossing of Provincial Highway No. 3 about one mile east of Shedden, Ont., mileage NF 123.12 Main Line Subd., protected to Board's satisfaction.
- 66619 Oct. 30—Approving overhead and side clearances of the ash hopper and proposed shelter of Toronto Terminals Railway Company's Central Heating Plant, Toronto, Ont.
- 66620 Oct. 31—Approving relocation of pipe lines, etc., of Imperial Oil Limited near C.N.R. tracks at Central Butte, Sask.
- 66621 Oct. 31—Declaring C.N.R. crossing of St. Leger Street, City of Kitchener, Ont., mileage 62.26, Brampton Subd., protected to Board's satisfaction; present speed limitation of ten miles per hour to be maintained.
- 66622 Oct. 31—Approving location of pipe lines, etc., of Imperial Oil Limited near C.N.R. tracks at Delburne, Alta.
- 66623 Nov. 1—Authorizing C.N.R. to construct and maintain sidings across public highway—Route No. 55—at Desbiens, Que., to serve the St. Raymond Paper Limited.
- 66624 Nov. 2—Authorizing C.N.R. to construct a spur across La Verendrye Street and Tache Avenue, City of St. Boniface, Man., to serve Dominion Oxygen Company Limited.

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The Board of Transport Commissioners for Canada

Judgments, Orders, Regulations and Rulings

Vol. XXXV

Ottawa, December 1, 1945

No. 17

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Application of the Middle Lake Board of Trade, in the Province of Saskatchewan, for an Order directing the Canadian Pacific Railway Company to build a station at Middle Lake, Saskatchewan.

File 42113

ORAL JUDGMENT

Mr. R. Dressler, Mr. M. Allen and Mr. W. Miller represented the Middle Lake Board of Trade, and

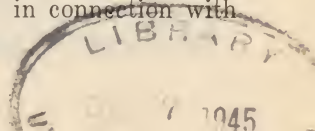
Mr. H. A. V. Green, K.C., appeared for Canadian Pacific Railway Company.

Heard at Humboldt, Sask., October 9, 1945.

The CHIEF COMMISSIONER: During the short adjournment which the Board has just taken, we have considered what has been presented to us to-day in the application of the Middle Lake Board of Trade, in the Province of Saskatchewan, for an order directing the Canadian Pacific Railway Company to build a station at Middle Lake, Saskatchewan. The present facilities which the railway company has at Middle Lake consist of a standard portable station with a waiting room space 21 feet by 10 feet, a small freight shed 10 feet by 20 feet and a small coal shed.

The main ground of complaint is the accommodation for passengers who have occasion to use the passenger waiting room, because of the fact that this waiting room is also made use of for the temporary storage of incoming and outgoing express and it has been alleged because of the use of the passenger waiting room for the temporary storage of express that the accommodation for passengers is inadequate; that is the actual complaint, the insufficiency of the facilities.

It is true that the hamlet of Middle Lake and the surrounding tributary territory has made considerable progress during recent years. It is also a fact that the traffic has increased from the station and there consequently follows from this, an increase in the earnings of the railway. The growth of the business of the railway at the point is, it seems to us, more marked in connection with



express business. But it would not seem necessary to quote specific figures of the earnings at the station from such sources as, "Received freight," "Forwarded freight," "Express Earnings," and "Passenger Earnings," other than to state that there have been increases. As I said before, perhaps the increase is more marked in respect to express, proportionately, than in connection with freight and passengers.

One can readily understand the commendable desire of the community, as represented by the Board of Trade, to have a new station erected which would be more commodious and perhaps also provide living quarters for the agent at the point. We think, on what has been presented to us here to-day, there is nothing very specific to show that any passengers have been unable to find accommodation in the present facilities, although the passenger waiting room has been used and is being used for express purposes. The railways have made the suggestion they would be prepared to heat part of the freight shed so that it could accommodate perishable express. It is suggested that this might be given consideration.

If the use of the passenger waiting room were denied entirely for the purpose of express, it seems to us that, particularly in connection with outgoing express, a considerable inconvenience might be occasioned to shippers of express at times. We have also evidence of the difficulty of obtaining materials for the construction of new buildings at the present time. While that is not, in any sense, a dominant factor in the matter, it is a question which we are entitled to take into consideration.

On the whole, we have reached the conclusion that no sufficient case has been made out by the applicant to justify us ordering the railway company, at this time, to construct a new station and, in the result, the application must therefore be dismissed.

While not making any order at this time other than to dismiss the application, we do suggest this to the Canadian Pacific Railway Company, that its officials should keep a close supervision of the situation at Middle Lake with a view to determining whether some additional or separate accommodation may be made for the express, both incoming and outgoing. We believe there is a desire on the part of the people of Middle Lake to co-operate, so far as possible, with the railways and, on the other hand, we think that the railways on their part, are desirous of furnishing reasonable facilities to the community; that is, after all, only good business.

While the application is dismissed now this, of course, does not prevent the Board of Trade or any other representative group from Middle Lake from applying to the railways or applying to the Board at a later date and under changed conditions for improved facilities at the point in the way of a new and better station. I think that is, perhaps, all we can say at the present time. As previously indicated the only order that will be made will be an order dismissing the application. My colleagues, I think, agree with the disposition which I have made of the matter.

October 9, 1945.

I concur:

HUGH WARDROPE.

GEORGE STONE.

ORDER No. 66629

In the matter of the application of the Middle Lake Board of Trade, in the Province of Saskatchewan, hereinafter called the "Applicants", for an order directing the Canadian Pacific Railway Company to build a station at Middle Lake, Saskatchewan.

File No. 42113

FRIDAY, the 2nd day of November, A.D. 1945.

J. A. CROSS, K.C., *Chief Commissioner.*HUGH WARDROPE, *Asst. Chief Commissioner.*G. A. STONE, *Commissioner.*

Upon hearing the application at the sittings of the Board held at Humboldt, Saskatchewan on October 9, 1945, in the presence of Counsel for the Applicants and for the Railway Company and what was alleged and upon the written submissions filed—

It is ordered: That the Application be, and it is hereby, dismissed.

J. A. CROSS,
Chief Commissioner.

Application of the Canadian Pacific Railway Company under Sections 180 to 184 inclusive, 256 and 312 of the Railway Act for authority to construct, maintain and operate a branch line of railway in the City of Brandon, in the Province of Manitoba, to serve Brandon Packers Limited, the proposed location of which said branch line is more particularly set out and described in the application of the company dated April 27, 1945.

Mr. H. A. V. Green, K.C., appeared for the Canadian Pacific Railway Company, Mr. N. W. Kerr, K.C., for the Brandon Packers Limited, Mr. G. A. Hall for the City of Brandon and Mr. R. A. Clement, Jr., for certain property owners.

Heard at Brandon, Manitoba, on October 22 and 23, 1945.

File No. 22664.12

ORAL JUDGMENT

CROSS, *Chief Commissioner.*

THE CHIEF COMMISSIONER: This is an application by the Canadian Pacific Railway Company to the Board under Sections 180 to 184, inclusive, 256 and 312 of the Railway Act for authority to construct, maintain and operate a branch line of railway in the City of Brandon, Manitoba, to serve Brandon Packers Limited, commencing at station 2 plus 52, being a point on the northerly boundary of the Canadian Pacific Railway Company station grounds in Brandon, thence on a curve to the right in a northwesterly direction across Assiniboine Avenue to the southerly boundary of Lot 7 in block 93 thence crossing Lots 7, 8, 9 and 10 in the said block to the northwest corner of said Lot 10; thence, in a northerly direction on Eighth Street north, crossing an industrial spur of the Canadian Pacific Railway Company and continuing northwesterly along the said Eighth Street north to the easterly boundary of Lot No. 3 in Block 107; thence, northwesterly across Lots 3 and 4 in the said block to the northerly boundary of said Lot 4 and thence continuing in the said direction across the northwest quarter of Section 23, Township 10, Range 19, west of the

principal meridian, to a point in the said quarter section, 2,919 feet from head block in said station grounds; together with an additional spur commencing at station 21 plus 02 of said branch line and extending therefrom in a northwesterly direction to a point in the said quarter section 840 feet from the said station 21 plus 02, all of which is shown in red on plan and profile and described in book of reference combined, deposited in the Land Titles Offices at Brandon, Manitoba, on March 24, 1945, as No. 523, which application and plan is of record with the Board under File No. 22664.12.

It will be noted that the location of the proposed branch line of railway is along a portion of Eighth Street north in the City of Brandon.

The application is opposed by a number of abutting landowners whose property lies on each side of Eighth Street and on which they have erected houses and other buildings. The property of the persons complaining is situate mostly between Assiniboine Avenue and Stickney Avenue.

The opposition of the property owners and the reasons which they advance against the granting of the application is readily understood. Almost anyone would be opposed to the construction of a branch line of railway on a street or highway on which his property fronts.

Section 182 of the Railway Act provides that,

"The Board, if satisfied that the branch line (that is the branch line applied for) is necessary in the public interest or for the purpose of giving increased facilities to business, and if satisfied with the location of such branch line, and the grades and curves as shown on such plan, profile and book of reference, may, in writing, authorize the construction of the branch line in accordance with such plan, profile and book of reference, or subject to such changes in location, grades and curves as the Board may direct."

It has been made amply clear to us that, for the purpose of giving increased facilities to the business of Brandon Packers Limited, it is desirable that it be provided with rail facilities in the form of a branch line to its packing plant in the northern section of the City of Brandon. At the present time the Brandon Packers Limited are not supplied with any spur line or siding. The live stock and other materials necessary to its business must be conveyed to the plant by motor truck and its finished products are also carried by truck and loaded on railway cars some distance away. The number of carloads of traffic, that is including both traffic to the plant and from the plant during the last year, were approximately 400. It can, therefore, be seen that for one industry this is a substantial amount of traffic.

The only real contest is as to the location of the proposed branch line. The City of Brandon is agreeable to the proposed location but requests that if the proposed spur is approved by the Board that, in the matter of claims for compensation, those prejudicially affected by the construction and operation of the proposed spur track on Eighth Street north, be given an opportunity to be heard in such manner as the Board may direct. Those opposing the application have been represented at this hearing by counsel and, of course, have had full opportunity to be heard in respect to all matters relevant to what is now before us.

During the course of the hearing a number of possible alternative routes for the branch line have been brought to our notice. The most of the suggested possible alternative routes are shown on Exhibits 1 and 2 filed with the Board. In addition to the alternative routes shown on Exhibits Nos. 1 and 2, a further alternative route has been suggested to us that is, namely, a route which would proceed along Twelfth Avenue north.

In addition to all that has been placed before us the Board, this morning, in company with representatives of all interested parties, made a view on the ground of the industry of Brandon Packers Limited, the route set out and described in the application of the railway company and also the several alternative routes to which reference has already been made.

After a full consideration of the evidence presented to us and after making a somewhat complete view of the proposed location on the ground, and the suggested alternative routes, the route applied for is, we think, the most feasible, reasonable and practical route that could reasonably be found. Much care has been taken by the Canadian Pacific Railway Company and Brandon Packers Limited, in examining the several possible routes. The City has also, to some extent, interested itself in the same manner. The question has also been a subject of study by the Brandon Board of Trade and the President of that body was good enough to come before us and tell us something of the part taken by the Board of Trade. The Board of Trade supports the application presently before us, after having made a careful study of the matter.

After giving the whole question our most earnest and careful consideration, and keeping in mind the fact that a number of protesting citizens will be inconvenienced, we have reached the conclusion that the application should be granted. There will be an order accordingly.

During the hearing there was some discussion as to the hours of switching inward and outward traffic over the branch line. No doubt switching movements at certain times of the day would cause less disturbance and inconvenience than at certain other hours. It has been suggested that the Board should fix the hours for switching. In the light of the evidence before us we do not think we should, at this time, specify any hours; that is a matter which can be best worked out between the railway company, the packing company and the City of Brandon. The hours which we fix might prove inconvenient. If, later, there should be any difficulty about the hours of switching the matter can always be brought to the Board's notice.

In respect to the question of compensation, our attention has been directed to Chapter 36, Statutes of Canada, 1930, being an Act to amend the Railway Act. Subsection 2 to which reference has been made repeals subsection 1 of Section 255 of the Railway Act of 1919 and enacts a new subsection. Section 255 of the Railway Act as amended is, in part, as follows,—

"The Railway of the company may, if leave therefor is first obtained from the Board as hereinafter authorized, but shall not without such leave, be carried upon, along or across any existing highway. Provided that the compensation, if any, payable by the company to adjacent or abutting landowners shall be determined under the arbitration sections of this Act in so far as such sections are applicable—and provided that where leave is obtained to carry any railway along a highway the Board may require the company to make compensation to the municipality if the Board deems proper, said compensation to be determined under the arbitration sections of this Act, in so far as such sections are applicable."

The City of Brandon does not make any claim whatever for compensation; consequently, it is unnecessary to deal with that phase of the matter.

It was suggested to us by counsel for the objecting property owners that the Board should, if an order is made, direct that claims for compensation of abutting property owners should be settled by arbitration. In my opinion the Board has no jurisdiction in respect to compensation to private property owners in cases of this kind. Such remedy as they may have, if any, it seems to me

must be found within the provisions of the Railway Act, at least, so far as we are presently concerned. In any event, on this application, we do not think we should make any order in respect to the question of compensation.

That, I think, is all that is necessary to say on this occasion. The branch line in question to be undertaken and completed within six months from the date of the issue of the Order. Is that satisfactory?

Mr. GREEN: I suppose if there was a sudden change in the weather, we could always apply for an extension.

The CHIEF COMMISSIONER: Oh, you could always apply. Order to go granting the application.

October 23, 1945.

I concur

HUGH WARDROPE.

GEORGE STONE.

ORDER No. 66650

In the matter of the application of the Canadian Pacific Railway Company, hereinafter called the "Applicant Company", under Sections 180 to 184 inclusive, 256 and 312 of the Railway Act, for authority to construct, maintain and operate a branch line of railway in the City of Brandon, Province of Manitoba, to serve Brandon Packers Limited, commencing at Station 2 plus 52 being a point on the northerly boundary of the Canadian Pacific Railway Company station grounds in Brandon, thence on a curve to the right in a northwesterly direction across Assiniboine Avenue to the southerly boundary of Lot 7 in Block 93, thence crossing Lots 7, 8, 9 and 10 in the said block to the northwest corner of said Lot 10, thence in a northerly direction on Eighth Street North crossing an industrial spur of Canadian Pacific Railway Company and continuing northwesterly along said Eighth Street North to the eastern boundary of Lot No. 3 in Block 107, thence northwesterly across Lots 3 and 4 in said block to the northerly boundary of said Lot 4, thence continuing in the said direction across the northwest quarter of Section 23, Township 10, Range 19, west of the principal meridian to a point in the said quarter section 2,919 feet from head block in said station grounds together with an additional spur commencing at Station 21 plus 02 of said branch line and extending therefrom in a northwesterly direction to a point in the said quarter section 840 feet from the said Station 21 plus 02, all of which is shown in red on plan and profile and described in book of reference combined, deposited in the Land Titles Office at Brandon, Manitoba, on March 24, 1945, as No. 523—on file with the Board under file No. 22664.12.

WEDNESDAY, the 7th day of November, A.D. 1945.

J. A. CROSS, K.C., *Chief Commissioner.*

HUGH WARDROPE, *Asst. Chief Commissioner.*

G. A. STONE, *Commissioner.*

Upon hearing the application at the sittings of the Board held at Brandon, Manitoba, on October 22 and 23, 1945, in the presence of Counsel for the Canadian Pacific Railway Company, the City of Brandon and property owners affected, and what was alleged—

It is ordered:

1. That the Applicant Company be, and it is hereby, authorized to construct, maintain and operate a branch line of railway in the City of Brandon, Province of Manitoba, to serve Brandon Packers Limited, commencing at Station 2 plus 52 being a point on the northerly boundary of the Canadian Pacific Railway Company station grounds in Brandon, thence on a curve to the right in a northwesterly direction across Assiniboine Avenue to the southerly boundary of Lot 7 in Block 93, thence crossing Lots 7, 8, 9 and 10, in the said block to the northwest corner of said Lot 10, thence in a northerly direction on Eighth Street North crossing an industrial spur of Canadian Pacific Railway Company and continuing northwesterly along said Eighth Street North to the eastern boundary of Lot No. 3 in Block 107, thence northwesterly across Lots 3 and 4 in said block to the northerly boundary of said Lot 4, thence continuing in the said direction across the northwest quarter of Section 23, Township 10, Range 19, west of the principal meridian to a point in the said quarter section 2,919 feet from head block in said station grounds together with an additional spur commencing at Station 21 plus 02 of said branch line and extending therefrom in a northwesterly direction to a point in the said quarter section 840 feet from the said Station 21 plus 02, all of which is shown in red on plan and profile and described in book of reference combined, deposited in the Land Titles Office at Brandon, Manitoba, on March 24, 1945, as No. 523—on file with the Board under file No. 22664.12.

2. That the branch line hereby authorized be constructed and completed within six months from the date of this order.

J. A. CROSS,
Chief Commissioner.

Consideration of the matter of the installation of additional protection at the crossing of the highway by the Canadian Pacific Railway, being the first crossing east of the station at Oak Lake in the Province of Manitoba, Mileage 31.95, Broadview Subdivision and of the apportionment of the cost of construction and maintenance of such protection, if any ordered.

Mr. E. D. Alder, K.C., who is also Town Clerk in the town of Oak Lake appeared for the town of Oak Lake and Mr. H. A. V. Green, K.C., for the Canadian Pacific Railway.

Heard at Brandon, Manitoba, on October 22, 1945.

File No. 23458

ORAL JUDGMENT

CROSS, *Chief Commissioner.*

The CHIEF COMMISSIONER: The roadway which crosses the tracks of the Canadian Pacific Railway Company connects North Railway Street and South Railway Street and is under the jurisdiction of the town of Oak Lake, Manitoba. The protection at the crossing presently consists of two highway crossing signs, one north and one south of the track, a metal crossing sign equipped with an automatic bell and red light situated on the north side of the track and on the west side of the roadway.

The plan of protection by way of automatic bell and light was approved by Order of the Board No. 21724 dated April 28, 1914, although it would appear that this protection had been installed by the railway company some time previously and at the expense of the company and since maintained at its expense.

Upon the application of the town of Oak Lake the Board, by Order No. 25484 dated September 30, 1916, authorized the construction of the crossing in question. It would seem, however, that the crossing had been in existence and in use as a crossing for over twenty-five years prior to that time. The first reported accident at the crossing occurred on August 12, 1910 when an automobile was struck by a train and demolished and its two passengers injured.

The question of further protection at this crossing was raised in 1930 following an accident at the crossing on December 14, 1929 in which a horse-drawn vehicle was struck by a train and one person killed. No Order for the installation of additional protection was made at the time. It seems that the town was not prepared to bear any part of the cost of further protection, in any event, not at that time.

Another accident occurred at this crossing on June 11, 1945. An automobile was struck on the crossing by a passenger train travelling at a speed of about 60 miles an hour with the result that a man, the only occupant of the automobile, was fatally injured. There does not appear to have been any other accident at this crossing since the earlier fatal accident of December 14, 1929.

Following the 1945 accident an inspection and report was made by an officer of the Board. An enquiry into the accident was also made by a coroner's jury and the jury made the following recommendation:—

"We strongly recommend that some better method of crossing signal or subway be installed at this crossing and that the town counsel, municipal councils and the Oak Lake Board of Trade, approach the Canadian Pacific Railway Company in this connection."

Under date of June 18, 1945, the Board received a communication from the Deputy Attorney-General of Manitoba enclosing a copy of the inquest form in connection with the coroner's jury proceedings. This letter called our attention to the recommendation of the coroner's jury and requested the Board to give attention to the recommendation.

The view lines at the crossing are restricted as shown by the blue print plan showing the sight lines at the crossing filed with the Board. While the number of accidents at the crossing fortunately have not been numerous, we have the evidence of the accident in 1910 and the two fatal accidents to which reference has already been made, one in December, 1929 and in June, 1945.

The railway company evidently considered some form of additional protection necessary at this crossing when, on its own motion and at its own cost, it installed the automatic bell which it appears was put into operation on August 16, 1913. Since then, in or about the year 1914, another main line track was constructed and put into operation by the company. This, undoubtedly, has tended to increase the danger. There is, at present, a double track main line and two sidings on the crossing.

There has been a considerable increase in the number of train movements over the crossing in recent years. A number of these are high speed passenger trains. The road on which the crossing is located is a local municipal road or street but no doubt, over the years, there has also been some increase in vehicular and pedestrian traffic over the crossing.

Upon consideration of all that has been placed before us and in the interests of the safety of the public at this level highway crossing, we think additional protection should be installed.

The cost of installing two standard flashing light crossing signals and one bell is estimated by the railway company at \$3,800 and the cost of maintenance at \$150 per annum.

Under the circumstances present here we think we would be justified in making a grant from the Railway Grade Crossing Fund towards the cost of the actual construction of the protection.

I would direct the Canadian Pacific Railway Company to install at this crossing protection by two flashing lights and one bell in lieu of the existing automatic bell protection approved under Board's Order No. 21724 dated April 28, 1914, the same to be installed in accordance with the Board's general Order No. 607. Forty per cent of the cost of actual construction, not to exceed the sum of \$1,520, to be paid out of the Railway Grade Crossing Fund. The balance of the cost of construction, as well as the cost of maintenance, to be borne and paid as follows: One-third thereof by the Town of Oak Lake and two-thirds by the Canadian Pacific Railway Company. A detailed plan showing the layout of the protection to be submitted for the approval of an engineer of the Board.

Brandon, October 23, 1945.

I concur:

HUGH WARDROPE.

GEORGE STONE.

ORDER No. 66631

In the matter of the accident on June 11, 1945, at the crossing of the highway by the Canadian Pacific Railway, being the first crossing east of the station at Oak Lake, in the Province of Manitoba, mileage 31.95 Broad-view Subdivision;

And in the matter of the protection to be provided at such crossing.

File No. 23458

MONDAY, the 5th day of November, A.D. 1945.

J. A. CROSS, K.C., *Chief Commissioner.*

HUGH WARDROPE, *Asst. Chief Commissioner.*

G. A. STONE, *Commissioner.*

Upon hearing this matter at the sittings of the Board held at Brandon, Manitoba, on the 22nd day of October, 1945, in the presence of Counsel for and representatives of the Town of Oak Lake and the Canadian Pacific Railway, and what was alleged—

It is ordered:

1. That, within ninety days from the date of this Order, the Canadian Pacific Railway Company install two flashing lights and one bell in lieu of the existing automatic bell protection approved under Board's Order No. 21724, dated April 28, 1914, at the first crossing east of the station at Oak Lake, in the Province of Manitoba, in accordance with the requirements of General Order No. 607, dated September 29, 1941, a detail plan showing the layout thereof to be submitted for the approval of an Engineer of the Board.

2. That forty per cent of the cost of installing the said flashing lights and bell, not exceeding, however, the sum of \$1,520, be paid out of the Railway Grade Crossing Fund; and that the remainder of such cost, as well as the cost of maintenance, be borne and paid one-third by the Town of Oak Lake and two-thirds by the Canadian Pacific Railway Company.

J. A. CROSS,

Chief Commissioner.

ACCIDENTS REPORTED TO THE OPERATING DEPARTMENT,
BOARD OF TRANSPORT COMMISSIONERS FOR CANADA,
SEPTEMBER, 1945

Railway Accidents	196 with 19 killed and 213 injured
Level Crossing Accidents.....	28 with 10 killed and 32 injured
Total	224 with 29 killed and 245 injured

	Killed	Injured
Passengers	1	24
Employees	4	169
Others	24	52
Total	29	245

DETAILS OF ACCIDENTS AT HIGHWAY CROSSING

Accidents K. I.		NOVA SCOTIA	
1	— 1	Automobile ran into side of train.	Licence N.S.84923.
1	— 1	Horse-drawn vehicle drove onto crossing in front of approaching train and was struck.	
QUEBEC			
1	— 2	Automobile drove onto crossing in front of approaching train and was struck.	Licence Que.12-818.
1	— 2	Automobile drove onto crossing in front of approaching train and was struck.	Licence D.C.796112.
1	— 1	Automobile ran into track motor car.	Licence Que.97-104.
1	— 1	Horse and buggy drove into side of train.	
1	1 —	Pedestrian threw himself under cars of a westward train passing over crossing.	
1	— 1	Automobile ran into side of train.	Licence Que.140-655.
1	— 1	Automobile drove onto crossing in front of approaching train and was struck.	Licence not given.
1	— 2	Automobile ran into side of train.	Licence Que.91156.
ONTARIO			
1	— 1	Automobile drove onto crossing in front of approaching train and was struck.	Licence Ont.61-E-76.
1	— 1	Auto Truck drove onto crossing in front of approaching train and was struck.	Licence Ont.C-3587.
1	— 1	Pedestrian pushing hand-cart struck by train.	
1	— 1	Automobile drove onto crossing in front of approaching train and was struck.	Licence Ont.797-J-2.
1	1 —	Auto Truck ran into side of train.	Licence Ont.47150-X.
1	— 1	Automobile ran into side of train.	Licence Ont.Z-7921.
1	2 1	Automobile drove onto crossing in front of approaching train and was struck.	Licence Ont.355-F-8.
1	— 2	Child with wagon ran across track and struck by hand-car.	
1	— 1	Auto Truck drove onto crossing in front of approaching train and was struck.	Licence Ont.8537-C.
1	3 —	Dump truck drove onto crossing in front of approaching train and was struck.	Licence Ont.25416-C.
1	— 4	Automobile drove onto crossing in front of approaching train and was struck.	Licence Ont.23-T-88.
MANITOBA			
1	— 1	Automobile ran into side of train.	Licence Man.37447.
1	— 1	Auto Truck drove onto crossing in front of approaching train and was struck.	Licence Man.PSV-949.
1	— 2	Automobile drove onto crossing in front of approaching train and was struck.	Licence Man.59774.

DETAILS OF ACCIDENTS AT HIGHWAY CROSSING—*Concluded*

Accidents K. I.

SASKATCHEWAN

- 1 — 2 Automobile drove onto crossing in front of approaching train and was struck. Licence Sask.54-316.

ALBERTA

- 1 — 1 Auto Truck ran into side of train. Licence Alta.PSV.3289.
1 2 — Auto Truck drove onto crossing in front of approaching train and was struck. Licence Alta.PSV.4207.

BRITISH COLUMBIA

- 1 — 1 Automobile drove onto crossing in front of approaching train and was struck. Licence BC.1006.

Of the 28 accidents at Highway Crossings, 26 occurred at Unprotected Crossings and 2 at Protected Crossings. Nineteen of the Accidents occurred after Sunrise and Nine after Sunset.

November 9, 1945.

SUMMARY OF ORDERS ISSUED BY THE BOARD

- 66625 Nov. 1—Approving installation of pipe lines, etc., of Standard Oil Company of British Columbia, Limited, near C.N.R. tracks at Prince George, B.C.
- 66626 Nov. 1—Approving under Maritime Freight Rates Act tolls published in Supplement No. 66 to Tariff C.T.C. No. E.3762, filed by C.N.R. under Sec. 3.
- 66627 Nov. 2—Approving location of pipe lines, etc., of Canadian Oil Companies Limited, near C.N.R. tracks at Hearst, Ont.
- 66628 Nov. 2—Declaring C.N.R. crossing of North Augusta Road first crossing east of Maitland Station, Ont., mileage 120.48 Cornwall Subd., protected to Board's satisfaction.
- 66629 Nov. 2—Dismissing application of the Middle Lake Board of Trade, Province of Saskatchewan, for order directing C.P.R. to build a station at Middle Lake, Sask.
- 66630 Nov. 3—Approving location of pipe lines, etc., of Imperial Oil Limited, near C.P.R. tracks at Meadow Lake, Sask.
- 66631 Nov. 5—Authorizing C.P.R. to install two flashing lights and one bell at first crossing east of station at Oak Lake, Man.
- 66632 Nov. 3—Approving Supplement No. 2, dated Montreal, P.Q., Sept. 7, 1945, and Ste. Clothilde, P.Q., Sept. 20, 1945, to Traffic Agreement, dated May 17, 1937, between the Bell Telephone Company of Canada and La Compagnie Telephonique Lauzon.
- 66633 Nov. 3—Approving Traffic Agreement, dated Montreal, Sept. 7, 1945, and Ste. Clothilde, Que., Sept. 20, 1945, between the Bell Telephone Company of Canada and Robert Laforest (Proprietor of La Compagnie Telephonique Lauzon).
- 66634 Nov. 3—Approving plan showing relocation of signal No. 7 of interlocking plant at crossing of C.P.R. and the Burrard Inlet Line of the Vancouver, Victoria and Eastern Railway and Navigation Company, Vancouver, B.C.
- 66635 Nov. 3—Declaring C.P.R. crossing of Main Street mileage 82.04 Winchester Subd., Chesterville, Ont. protected to Board's satisfaction.
- 66636 Nov. 5—Declaring C.P.R. crossing of highway near Revelstoke, B.C., mileage 3.4 Shuswap Subd., protected to Board's satisfaction.
- 66637 Nov. 5—Declaring Esquimalt & Nanaimo Railway (C.P.R.) crossing of highway first immediately south of Langford Station, B.C., mileage 7.9 Victoria Subd., protected to Board's satisfaction.
- 66638 Nov. 6—Approving agreement covering basis of settlement on interchange of long distance message toll service between the British Columbia Telephone Company and the Alberta Government Telephones, dated Oct. 25, 1945.
- 66639 Nov. 5—Authorizing Municipal Corporation of St. Leonard, County of Portneuf, Quebec, to construct highway crossing over C.N.R. at mileage 36.67 Batiscan Subd., on a new road to connect St. Leonard with Chute Panet, Que.
- 66640 Nov. 5—Declaring C.N.R. crossing of Provincial Highway No. 14 first west of West Huntingdon Station, Ont., mileage 1.80 Madoc Subd., protected to Board's satisfaction; present speed limitation of ten miles per hour to be maintained.
- 66641 Nov. 6—Authorizing C.P.R. to reconstruct bridge No. 79.12 Cartier Subd. over Junction Creek at Sudbury, Ont.
- 66642 Nov. 6—Approving revised Appendix "A", dated July 4, 1945, to Traffic Agreement between the Bell Telephone Company of Canada and The Mount Albert Telephone Company, Limited, dated Aug. 30, 1938.
- 66643 Nov. 6—Authorizing C.P.R. to construct bridge at mile 0.25 Stobie Branch over Nolin's Creek, at Sudbury, Ont.
- 66644 Nov. 6—Declaring C.P.R. crossing of highway first immediately west of station of West Shefford, Que., mileage 114.4 Sherbrooke Subd., protected to Board's satisfaction.
- 66645 Nov. 7—Authorizing C.P.R. to use and operate bridge over Little Current Channel between Goat and Manitoulin Islands, Province of Ont., at mileage 38.3 Little Current Subd.; and permit the use of said bridge by highway traffic until Dec. 15, 1945.
- 66646 Nov. 6—Authorizing Dept. of Highways for Ontario to construct a highway crossing over the C.P.R. at mileage 37.97 Little Current Subd., on Goat Island, District of Manitoulin, Ont.

- 66647 Nov. 5—Declaring Nipissing Central Railway crossing of highway first immediately west of station at Evain, Que., mileage 53.45 Kirkland Lake Subd., protected to Board's satisfaction.
- 66648 Nov. 7—Requiring that crossing of Gilmore Road by C.N.R. in Town of Fort Erie, Ont. be protected by watchman between the hours of 7 a.m. and 7 p.m. daily; rescinding Order No. 65169, dated Aug. 16, 1944.
- 66649 Nov. 7—Rescinding Order No. 66515, dated Sept. 28, 1945, whereby the C.P.R. was authorized to construct branch line of railway to serve Curran and Briggs Limited at Camrose, Alta.
- 66650 Nov. 7—Authorizing C.P.R. to construct branch line of railway in the City of Brandon, Man. to serve Brandon Packers Limited.
- 66651 Nov. 7—Amending Order No. 65664, dated January 26, 1945, which authorized the C.P.R. to construct branch line of railway to serve Western Gypsum Products Limited, Parish of St. James, Winnipeg, Man.
- 66652 Nov. 5—Authorizing Temiskaming and Northern Ontario Railway to relocate shelter station at Evain, Que., mileage 53.47, Kirkland Lake Subd.
- 66653 Nov. 7—Removing present speed limitation of ten miles per hour at crossing of highway by C.P.R. second north of Okotoks Station, Alta., mileage 25.6 Macleod Subd.
- 66654 Nov. 8—Declaring C.P.R. crossing of Frontenac Street first west of Megantic Station, Que., mileage 0.23 Megantic Subd., protected to Board's satisfaction; present speed limitation of ten miles per hour to be maintained and all switching movements flagged over crossing.
- 66655 Nov. 8—Approving revised sheets of tariff C.T.C. No. 25 of British Columbia Telephone Company, dated November 1, 1945.
- 66656 Nov. 8—Approving location of pipe lines, etc., of McColl-Frontenac Oil Company Limited, near C.P.R. tracks at Perth, N.B.
- 66657 Nov. 8—Approving location of pipe lines, etc., of Consumers' Co-operative Refineries Limited, near tracks of C.N.R. at mileage 91.0 Qu'Appelle Subd., Regina, Sask.
- 66658 Nov. 8—Authorizing Pere Marquette Railway Company to construct branch line of railway to serve H. J. Heinz Company of Canada Limited in the Town of Wallaceburg, Ont.
- 66659 Nov. 9—Approving location of pipe lines, etc., of North Star Oil Limited, near C.P.R. tracks at Manor, Sask.
- 66660 Nov. 9—Approving location of pipe lines, etc., of Shell Oil Company of British Columbia, Limited, near C.P.R. tracks at Vernon, B.C.
- 66661 Nov. 9—Approving location of pipe lines, etc., of Imperial Oil Limited, near C.P.R. tracks at Strathmore, Alta.
- 66662 Nov. 9—Approving location of pipe lines, etc., of Imperial Oil Limited, near C.P.R. tracks at Warner, Alta.
- 66663 Nov. 9—Declaring Pere Marquette Railway crossing of highway first north of station at Sombra, Ont., mileage 53.35 No. 2 Subd., protected to Board's satisfaction.
- 66664 Nov. 9—Declaring C.P.R. crossing of Centre Street in the City of Chatham, Ont., mileage 64.4 Windsor Subd., protected to Board's satisfaction; present speed limitation of ten miles per hour to be maintained.
- 66665 Nov. 9—Extending time within which the C.P.R. was required under Order No. 66120, dated June 9, 1945, to construct a branch line of railway to serve Burgess Tools Limited.
- 66666 Nov. 9—Declaring C.N.R. crossing of Montcalm Street, Town of Chicoutimi, Province of Que., mileage 114.6 Jonquiere Subd., protected to Board's satisfaction; present speed limitation of ten miles per hour to be maintained.
- 66667 Nov. 10—Authorizing C.P.R. to use and operate bridge 37.3 Little Current Subd., Ont.
- 66668 Nov. 10—Declaring C.N.R. crossing of highway first east of the station at Pointe Bleue, Que., mileage 15.80 Roberval Subd. of the Laurentian Division protected to Board's satisfaction.
- 66669 Nov. 10—Declaring C.N.R. crossing of River Road at St. Leonard Junction, Que., mileage 80.6 Drummondville Subd., protected to Board's satisfaction.
- 66670 Nov. 10—Declaring C.P.R. crossing of highway first west of station at Maple Creek, Sask., mileage 84.8 Maple Creek Subd., protected to Board's satisfaction.

- 66671 Nov. 12—Amending Order No. 66579, dated Oct. 17, 1945, by striking out certain words in the heading and operating parts of said Order and substituting certain words therefor.
- 66672 Nov. 12—Approving location of C.N.R. shelter to be erected at Urling, B.C.
- 66673 Nov. 13—Approving location and details of C.N.Rys' station building at Glasgow, Ont.
- 66674 Nov. 12—Authorizing Nipissing Central Railway Company to open for the carriage of traffic its main track entrance into its station yard at Rouyn, Que. and railway grade crossing over C.N.Rys., Senneterre Subd.
- 66675 Nov. 13—Declaring C.P.R. crossing of highway first west of station at Waldeck, Sask., mileage 100 Swift Current Subd., protected to Board's satisfaction.
- 66676 Nov. 13—Relieving C.P.R. from maintaining cattle guards at public highway crossing over tracks of its Sudbury-Toronto line, in Lot 12, Con. III, Cleland Twp., at Wanup Station, Ont.
- 66677 Nov. 13—Authorizing C.N.R. and New York Central Railroad to operate their trains through interlocking plant at Hawthorne, Ont.; speed of all trains of New York Central Railroad is not to exceed fifteen miles an hour when approaching crossing.
- 66678 Nov. 13—Approving location of pipe lines, etc., of Imperial Oil Limited, near C.N.R. tracks at Waseca, Sask.
- 66679 Nov. 13—Approving under Maritime Freight Rates Act tolls published in Supplement No. 38 to Tariff C.T.C. No. E.3859 and in Supplement No. 7 to Tariff C.T.C. No. E.3879 filed by C.N.R. under Sec. 3.
- 66680 Nov. 13—Declaring C.P.R. crossing of highway first south of station at Emery, Ont., mileage 8 MacTier Subd., protected to Board's satisfaction.
- 66681 Nov. 13—Approving location of pipe lines, etc., of Shell Oil Company of British Columbia, Limited, near C.P.R. tracks at Kamloops, B.C.
- 66682 Nov. 13—Declaring C.N.R. crossing of Cote Noir Road, Town of St. Lambert, Que., mileage 4.76 St. Hyacinthe Subd., protected to Board's satisfaction.
- 66683 Nov. 14—Authorizing C.N.R. to construct branch line of railway in the City of Saskatoon, Sask.
- 66684 Nov. 13—Approving location of pipe lines, etc., of Imperial Oil Limited, near C.P.R. tracks at Eastend, Sask.
- 66685 Nov. 14—Declaring C.N.R. crossing of highway first east of station at Carrier, Que., mileage 7.8 Diamond Subd., protected to Board's satisfaction.
- 66686 Nov. 9—Authorizing R.M. of Senlac No. 411, Saskatchewan, to divert highway and construct highway across C.P.R., in lieu of existing Hastings Avenue crossing, mileage 44.77 Hardisty Subd.
- 66687 Nov. 14—Declaring C.P.R. crossing of highway located on the west leg of the wye at Campsur, Petawawa, Ont., mileage 105.2 Chalk River Subd., protected to Board's satisfaction; present speed limitation of ten miles per hour at crossing to be maintained.
- 66688 Nov. 15—Authorizing C.N.R. to construct highway crossing of their railway between NW $\frac{1}{4}$ Sec. 25 and SW $\frac{1}{4}$ of Sec. 26, Twp. 35, Rge. 20, west of 4th M, near Big Valley, Alta.
- 66689 Nov. 16—Authorizing Nipissing Central Railway Co. and C.N.R. to operate their trains over crossing of Nipissing Central Railway and C.N.R. at Rouyn, Que.

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The Board of Transport Commissioners for Canada

Judgments, Orders, Regulations and Rulings

Vol. XXXV

Ottawa, December 15, 1945

No. 18

This publication is issued fortnightly, on the 1st and 15th of each month. Annual subscription, \$3.00; single numbers, 20 cents; in quantities, 25 per cent discount. Remittances should be made to the King's Printer, Ottawa, by postal money order, express order or accepted cheque. The use of currency for this purpose is contrary to the advice of the postal authorities and entails a measure of risk. Postage stamps, foreign money or uncertified cheques will not be accepted. No extra charge is made for postage on documents forwarded to points in Canada and in the United States, but cost of postage is added to the selling price when documents are mailed to other countries. Early application should be made for copies in quantities. Subscriptions should be sent, in every case, to the King's Printer, Ottawa.

Application of Wadena and District Board of Trade, Wadena, Saskatchewan, for an Order directing that some form of additional protection be installed at the crossing of Highway No. 35 (so called) by the Canadian National Railways, being the first crossing west of the station at Wadena, in the Province of Saskatchewan, at mileage 86.8, Margo Subdivision;

And consideration of the form of such protection, and the distribution of the cost of construction and maintenance of the protection, if any ordered.

(File No. 27467.29)

Mr. A. K. DYSART, for the Canadian National Railways.

Mr. J. A. MACMILLAN, K.C., for the Town of Wadena, and Wadena and District Board of Trade.

JUDGMENT

WARDROPE, *Assistant Chief Commissioner:*

Highway No. 35, running in a northerly and southerly direction, crosses the single track main line of the Canadian National Railways, hereinafter referred to as "the railways", at mileage 86.8, Margo Subdivision, which latter point is the first crossing west of the railway station in the town of Wadena, in the Province of Saskatchewan.

That portion of highway No. 35 within the limits of the town is under the sole jurisdiction of Wadena.

Immediately to the south of the said main line track the highway crosses over a passing track and immediately to the south of the said passing track it again crosses over an industrial track, making three tracks in all.

The industrial track, being the most southerly of the three tracks above mentioned, on either side of the crossing serves elevators, oil companies, stock yards and other industries.

The crossing is level and at a slight angle to the tracks.

The present protection on the north side of the crossing consists of a statutory signboard some 153 feet north of the main line, and, in addition, an

advance warning sign some 252 feet north of the main line on the west side of the highway. Also, on approaching the crossing from the north, there is a liberal view east and west for long distances along the tracks, so much so, in fact, that the applicant, while not minimizing the danger in approaching from this direction, conceded that under ordinary circumstances it should offer no particular hazards.

Approaching the crossing from the south there is a reflectorized advance warning sign some 596 feet from the crossing, and on the east side of the highway. There is also a "stop" sign on the east side of the highway just short of the industrial track, and, in addition, there is a statutory signboard denoting a railway crossing.

The applicant was chiefly concerned with the conditions of approach to the crossing from the south. From this direction it is quite apparent that the proximity of the elevators immediately to the east and west of the crossing, and all the other buildings and obstructions to the view lying along the industrial track tend to obstruct the sight of approaching trains from both directions.

A traffic count for three days, or seventy-six consecutive hours, taken on the 7th, 8th and 9th of September, 1945, being Friday, Saturday and Sunday, respectively, showed a total of twenty-three train movements east and west over the crossing excluding switching movements; the latter movements over the passing track by Order No. 33232, dated December 18, 1922, are to be flagged. The number of automobiles and trucks passing over the crossing north and south during the above period was relatively light, there being 263 on Friday, September 7, 1945; 326 on Saturday, September 8, 1945; and 143 on Sunday, September 9, 1945.

From 1922 to May, 1943, there were no reported accidents at this crossing. On May 17, 1943, there was a serious accident when a car in the early hours of the morning, approaching the crossing from the north, was struck by a train coming from the east, and three people were killed.

The applicant does not advance this tragic occurrence as an argument for additional protection in view of the ample and clear visibility of approaching trains from this direction. It is one of those accidents which are hard to understand, the driver of the car being a local resident and having full knowledge of the crossing.

The next and last reported accident occurred on November 17, 1944, when a truck from the south, the more hazardous direction of approach, was struck by a train approaching from the west, the driver being fatally injured and a passenger injured. This accident occurred about seven o'clock in the evening. In this instance the driver turned out and passed a team of horses and wagon which had stopped on the industrial track waiting for the train to go by. The driver of the truck was also a local resident and familiar with the crossing.

The estimate of costs to provide standard flashing lights and bell as additional and automatic protection at this crossing is some \$4,600 for construction of same, and \$400 annually for maintenance.

The provincial authorities have stated by letter that they would be willing to assume 25 per cent of the costs.

The applicant, the town of Wadena, under whose jurisdiction, as above stated, the road over the crossing lies, is unwilling to assume any portion of the costs.

The railways do not feel that with reasonable care being taken by the users thereof that the crossing is of such a dangerous nature that additional and automatic protection is required.

The whole problem with regard to this crossing lies in whatever undue hazards there may be in approaching it from the south. As the applicant stated at the hearing, approaching from the north is not in issue.

As will be seen from what has been said, this crossing had a good record for over twenty years. Then in 1943 occurred one of those unfortunate accidents where everything would appear to be in the favour of a reasonable and prudent driver of a vehicle. Under such circumstances, not even the addition of automatic protection would be likely to prevent this kind of tragedy.

The second accident in 1944 would appear to have been the result of disregard of the most elementary precautions at a familiar level crossing.

At the present time I do not think that the record of this crossing warrants the expenditure of \$4,600 plus maintenance charges of \$400 for the proposed additional protection; nor do I think that the obstructions which lie east and west of the crossing along the industrial track are such that would entrap a reasonable and prudent driver of a motor vehicle approaching the crossing from the south.

Until conditions deteriorate at this crossing from what they are at the present, and considering that the applicant is unwilling to assume any part of the burden of costs, I would hesitate to authorize the expenditure of the above mentioned sum of money for additional automatic protection at this crossing.

But there is a feature regarding protection at this crossing which would seem to require reviewing.

By the provisions of previous Orders it has been required that any movements on the passing track during business hours be flagged over the crossing. No flagging has been required over the elevator or industrial track.

I would rescind such provisions and in lieu thereof would order as follows:— That all cars standing on the elevator or industrial track at Wadena, in the Province of Saskatchewan, be kept clear of the street line on either side of Main Street; and that any movements made on the passing track and on the elevator or industrial track be flagged over the said crossing.

Order to go accordingly.

HUGH WARDROPE.

November 28, 1945.

I concur:

J. A. CROSS.

G. A. STONE.

ORDER No. 66769

In the matter of the application of Wadena and District Board of Trade, Wadena, Saskatchewan, for an Order directing that some form of additional protection be installed at the crossing of Highway No. 35 (so called) by the Canadian National Railways, being the first crossing west of the station at Wadena, in the Province of Saskatchewan, at mileage 86.8, Margo Subdivision:

And in the matter of consideration of the form of such protection, and the distribution of the cost of construction and maintenance of the protection, if any ordered.

File No. 27467.29

MONDAY, the 3rd day of December, A.D. 1945.

J. A. CROSS, K.C., *Chief Commissioner.*

HUGH WARDROPE, *Commissioner.*

G. A. STONE, *Commissioner.*

Upon hearing the application at the sittings of the Board held at Humboldt, Saskatchewan, on the 9th day of October, 1945, in the presence of Counsel for the applicants and the Canadian National Railways, and what was alleged:—

It is ordered:

1. That all cars standing on the elevator or industrial track of the Canadian National Railways at Wadena, in the Province of Saskatchewan, be kept clear of the street line on either side of Main street.

2. That any movements made on the passing track and on the elevator or industrial track be flagged over the said crossing.

3. That Order No. 33159, dated the 27th day of November, 1922, be, and it is hereby rescinded.

4. That Order No. 33232, dated the 18th day of December, 1922, be, and it is hereby amended by striking out the second paragraph thereof, which said second paragraph begins with the words, "AND WHEREAS, under Order No. 33159".

5. That Order No. 63656, dated the 11th day of June, 1943, be, and it is hereby amended by striking out the last paragraph thereof, which said last paragraph begins with the words, "AND IT IS ORDERED that all cars".

J. A. CROSS,
Chief Commissioner.

GENERAL ORDER No. 674

In the matter of the application of the Great Northern Railway Company, hereinafter called the "Applicant Company", under Section 348 of the Railway Act, for an Order approving the conditions limiting liability to be printed on its passes.

File No. 496.43

TUESDAY, the 20th day of November, A.D. 1945.

J. A. CROSS, K.C., *Chief Commissioner.*

HUGH WARDROPE, *Asst. Chief Commissioner.*

A. SYLVESTRE, K.C., *Deputy Chief Commissioner.*

J. A. STONEMAN, *Commissioner.*

G. A. STONE, *Commissioner.*

Upon reading the submissions of the Applicant Company—

It is ordered:

1. That the terms and conditions on passes of the Applicant Company, which are marked "A" and are on file with the Board under file No. 496.43, be, and they are hereby, approved for use on railway lines in Canada operated by the Applicant Company and on trains of the said Company operated over the railway of the Midland Railway Company of Manitoba.

2. That General Order No. 640 be, and it is hereby, amended by striking out the words, "Great Northern Railway Company" in paragraph numbered 1 thereof.

J. A. CROSS,
Chief Commissioner.

ACCIDENTS REPORTED TO THE OPERATING DEPARTMENT
BOARD OF TRANSPORT COMMISSIONERS FOR CANADA
OCTOBER, 1945

Railway Accidents	182 with	8 killed and	196 injured
Level Crossing Accidents.....	45 with	29 killed and	56 injured
Total	227 with	37 killed and	252 injured

	Killed	Injured
Passengers	—	20
Employees	3	153
Others	34	79
Total	37	252

DETAILS OF ACCIDENTS AT HIGHWAY CROSSING

NOVA SCOTIA

Accidents	K.	I.	
1	—	1	Automobile drove onto crossing in front of approaching train and was struck. Licence N.S.73797.
1	1	1	Auto Truck drove onto crossing in front of approaching train and was struck. Licence N.S.4541.
1	—	2	Auto Truck drove onto crossing in front of approaching train and was struck. Licence C-9-43.

NEW BRUNSWICK

1	—	1	Horse-drawn vehicle drove onto crossing in front of approaching train and was struck.
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QUEBEC

1	—	2	Automobile ran into side of train. Licence Que.90-0-45.
1	—	3	Auto Truck drove onto crossing in front of approaching train and was struck. Licence Que.L-3254.
1	—	2	Auto Truck drove onto crossing in front of approaching train and was struck. Licence Que.F-27-938.
1	—	2	Automobile struck Track Motor Car. Licence Que.N-5150.
1	2	2	Automobile drove onto crossing in front of approaching train and was struck. Licence Que.98-085.
1	3	—	Auto Truck drove onto crossing in front of approaching train and was struck. Licence Que.L-6131.
1	1	—	Pedestrian run over by engine when it was uncoupled from train.
1	—	4	Automobile ran into side of train. Licence not given.
1	—	2	Automobile drove onto crossing in front of approaching train and was struck. Licence Que.98-178.
1	1	—	Pedestrian walked onto crossing in front of approaching train and was struck.
1	1	—	Motorcycle ran into side of train.

ONTARIO

1	—	2	Auto Truck drove onto crossing in front of approaching train and was struck. Licence Ont.27691-C.
1	—	1	Automobile drove onto crossing in front of approaching train and was struck. Licence Ont.86827-C.
1	1	—	Automobile drove onto crossing in front of approaching train and was struck. Licence not given.
1	1	—	Auto Truck ran into side of train. Licence Ont.58-X-27.
1	—	2	Auto Truck ran into side of train. Licence Ont.43946-C.
1	1	—	Auto Truck drove onto crossing in front of approaching train and was struck. Licence Ont.C-1462.
1	—	1	Pedestrian crawled under gates and was struck by train.
1	3	2	Automobile ran into side of train. Licence not given.

Accidents K. I.

ONTARIO—*Concluded*

- | | | | |
|---|---|---|---|
| 1 | 6 | — | Automobile drove onto crossing in front of approaching train and was struck. Licence Ont.340-L-5. |
| 1 | 1 | — | Pedestrian walked onto crossing in front of approaching train and was struck. |
| 1 | — | 2 | Auto Truck drove onto crossing in front of approaching train and was struck. Licence Ont.77143-C. |
| 1 | 1 | — | Automobile ran into side of train. Licence Ont.6-B-327. |
| 1 | 1 | — | Cyclist drove onto crossing in front of approaching train and was struck. |
| 1 | — | 2 | Automobile ran into side of train. Licence Ont.35-H-8. |

MANITOBA

- | | | | |
|---|---|---|---|
| 1 | — | 1 | Automobile drove onto crossing in front of approaching train and was struck. Licence not given. |
| 1 | — | 3 | Automobile drove onto crossing in front of approaching train and was struck. Licence Man.68730. |
| 1 | — | 1 | Automobile ran into side of train. Licence Sask.34994. |

SASKATCHEWAN

- | | | | |
|---|---|---|---|
| 1 | — | 1 | Automobile drove onto crossing in front of approaching train and was struck. Licence Sask.77857. |
| 1 | 1 | 2 | Auto Truck ran into side of train. Licence Sask.F-24508. |
| 1 | — | 1 | Auto Truck drove onto crossing in front of approaching train and was struck. Licence Sask.F-129. |
| 1 | 3 | — | Auto Truck drove onto crossing in front of approaching train and was struck. Licence Sask.97-310. |
| 1 | — | 2 | Auto Truck ran into side of train. Licence Sask.F-16975. |
| 1 | 1 | — | Pedestrian walked onto crossing in front of approaching train and was struck. |

ALBERTA

- | | | | |
|---|---|---|--|
| 1 | — | 2 | Automobile ran into side of train. Licence Alta.67242. |
| 1 | — | 2 | Auto Truck drove onto crossing in front of approaching train and was struck. Licence Alta.C-10582. |
| 1 | — | 1 | Pedestrian walked onto crossing in front of approaching train and was struck. |

BRITISH COLUMBIA

- | | | | |
|---|---|---|--|
| 1 | — | 2 | Auto Truck skidded into side of train. Licence B.C. C-1-776. |
| 1 | — | 1 | Automobile ran into side of train. Licence B.C. 52994. |
| 1 | — | 1 | Automobile ran into side of train. Licence B.C. 33-488. |
| 1 | — | 2 | Automobile ran into side of train. Licence B.C. 64-354. |

Of the 45 accidents at Highway Crossings, 37 occurred at Unprotected Crossings and 8 at Protected Crossings. Twenty-four of the Accidents occurred after Sunrise and Twenty-one after Sunset.

December 8, 1945.

SUMMARY OF ORDERS ISSUED BY THE BOARD

- 66690 Nov. 16—Authorizing Municipal Council of City of Kitchener to construct public crossing over Grand River Railway (C.P.R.), Kitchener, Ont.
- 66691 Nov. 16—Authorizing C.N.R. and C.P.R. to operate their engines, cars and trains over branch line of railway of The Toronto Harbour Commissioners serving Ogilvie Flour Mills Co., Ltd., at Queens Quay, Toronto, Ont.
- 66692 Nov. 16—Approving location of pipe lines, etc., of Shell Oil Company of British Columbia, Limited, near C.P.R. tracks at Golden, B.C.
- 66693 Nov. 16—Approving clearances of siding serving General Motors of Canada Limited, in the City of Oshawa, Ont. (C.N.R.).
- 66694 Nov. 17—Approving Supplemental Agreement dated June 1, 1945, to Traffic Agreement between the Bell Telephone Company of Canada and the New York Telephone Company dated July 14, 1922.
- 66695 Nov. 17—Amending Order No. 66119, dated June 8, 1945, *re* opening for traffic C.N.Rys. Eastern Junction and Bout de l'Île on the Island of Montreal, Que.
- 66696 Nov. 19—Authorizing Niagara, St. Catharines and Toronto Railway Company to construct industrial spur diagonally along and across Carlton Street, St. Catharines, Ont. to serve The McKinnon Industries Limited.
- 66697 Nov. 17—Approving clearances of five-ton overhead crane located over three yard tracks of C.N.Rys. at West Toronto, Ont.
- 66698 Nov. 19—Approving location of pipe lines, etc., of The Eston Co-operative Association Limited near C.N.R. tracks at Eston, Sask.
- 66699 Nov. 20—Approving C.N.R. plans of bridge over the Assiniboine River at Winnipeg, Man.
- 66700 Nov. 20—Approving location of pipe lines, etc., of McColl Frontenac Oil Company Ltd. near C.P.R. at Lachute, Que.
- 66701 Nov. 20—Authorizing the Canadian Northern Railway Company to construct an extension of spur line authorized by Order No. 25574, to serve the premises of the Broadbent Lumber Company Limited in the City of Winnipeg, Man.
- 66702 Nov. 19—Declaring C.N.R. crossing of Burnside Road near Victoria, B.C. mileage 2.59 Cowichan Subd., protected to Board's satisfaction.
- 66703 Nov. 20—Approving plan dated Oct. 11, 1945, *re* crossing of highway and C.P.R. second north of Okotoks Station, Alta.
- 66704 Nov. 20—Declaring C.P.R. crossing of 20th Street in the City of Saskatoon, Sask., mileage 0.8 Wilkie Subd. protected to Board's satisfaction; present speed limitation of fifteen miles per hour to be maintained.
- 66705 Nov. 20—Approving clearances of a proposed cinder disposal plant at Alyth, Alta. (C.P.R.).
- 66706 Nov. 22—Approving Supplement No. 4, dated at Sherbrooke, Sept. 21, 1945, and at Montreal, Sept. 7, 1945, to Traffic Agreement between the Bell Telephone Company of Canada and La Compagnie Canadienne de Telephone, dated January 7, 1937.
- 66707 Nov. 22—Declaring C.P.R. crossing of Van Cortland Street in the town of Arnprior, Ont., mileage 40.96 Chalk River Subd. protected to Board's satisfaction.
- 66708 Nov. 22—Granting C.N.R. leave to appeal to the Supreme Court of Canada from the decision of the Board *re* bridges across Blackwater River, Thunder Bay District, Ont.
- 66709 Nov. 22—Authorizing the Toronto, Hamilton and Buffalo Railway Company and C.N.R. to construct branch line of railway in the City of Hamilton, County of Wentworth, Ont.
- 66710 Nov. 23—Declaring Northern Alberta Railways crossing of highway mileage 23.8 Edmonton Subd., Alta. protected to Board's satisfaction.
- 66711 Nov. 23—Extending time within which C.P.R. was required to construct and complete a branch line of railway to serve F. C. Webb in the Township of Etobicoke, County of York, Ont., mileage 8.9 Galt Subd.
- 66712 Nov. 23—Authorizing Municipal Council of the City of Saint Hyacinthe, Que. to construct Sicotte Street across two industrial spurs of C.N.Rys., City of Saint Hyacinthe, Que.

- 66713 Nov. 23—Amending Order No. 59575, dated Sept. 13, 1940, *re* agreement between C.N.Rys. and C.P.R. providing for the running of trains, etc. of the former over the tracks of the latter between l'Epiphanie and Jacques Cartier Junction.
- 66714 Nov. 24—Declaring C.P.R. crossing of Nairn Avenue, Winnipeg, Man., Keewatin Subd., protected to Board's satisfaction; present speed limitation of ten miles per hour at crossing to be maintained.
- 66715 Nov. 24—Declaring C.N.R. crossing of provincial highway No. 9 about three-quarters of a mile north of station at Harriston, Ont., mileage 6.42 Owen Sound Subd., protected to Board's satisfaction.
- 66716 Nov. 24—Approving under Maritime Freight Rates Act tolls published in tariffs filed by C.N.Rys. under Sec. 3.
- 66717 Nov. 27—Authorizing C.P.R. to use and operate bridge over Little Current Channel between Goat and Manitoulin Islands, Ont., mileage 38.3 Little Current Subd. and to permit the use of bridge by highway traffic.
- 66718 Nov. 21—Approving location of pipe lines, etc., of North Star Oil Limited near C.N.Rys. at Blaine Lake, Sask.
- 66719 Nov. 21—Authorizing Indian Affairs Branch of the Dept. of Mines and Resources, Ottawa, to construct level highway crossing over C.N.R. at mileage 5.1 Quibell Subd., Ont.
- 66720 Nov. 24—Approving location of pipe lines, etc., of North Star Oil Limited near C.N.R. tracks at Kelliher, Sask.
- 66721 Nov. 26—Declaring C.N.R. crossing of 120th Street, City of Edmonton, Alta., mileage 2.40 East Loop Edmonton Terminal Subd., protected to Board's satisfaction; present speed limitation of ten miles per hour to be maintained.
- 66722 Nov. 27—Declaring Lake Erie and Northern Railway crossing of highway immediately north of McAllister Stop Shelter, Ont., mileage 25.7 Port Dover to Galt Subd. protected to Board's satisfaction; present speed limitation of 20 miles per hour to be maintained.
- 66723 Nov. 26—Declaring C.P.R. crossing of Provincial Highway No. 7, 1.89 miles West of the station at Guelph, Ont., mileage 33.49 Goderich Subd. protected to Board's satisfaction; present speed limitation of six miles per hour to be maintained.
- 66724 Nov. 26—Authorizing C.N.R. to construct airport road across their railway at mileage 71.66 Kapuskasing Subd., Ont.
- 66725 Nov. 27—Authorizing C.N.R. and C.P.R. to operate their engines, etc. over siding of the Toronto Harbour Commissioners serving Standard Chemical Company Limited, Toronto, Ont.
- 66726 Nov. 27—Declaring C.P.R. crossing of Secondary Highway in Saint John County, at South Bay, N.B. mileage 4.57 Saint John Subd. protected to Board's satisfaction.
- 66727 Nov. 27—Authorizing operation by C.N.R. over two connections between the Fort Erie branch of New York Central Railroad and the tracks of C.N.R. at Amigari.

The Board of Transport Commissioners for Canada

Judgments, Orders, Regulations and Rulings

Vol. XXXV

Ottawa, January 1, 1946

No. 189

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GENERAL ORDER No. 675

In the matter of the specifications for highway crossing signals of the wigwag type.

File No. 27214.20

THURSDAY, the 29th day of November, A.D. 1945.

J. A. CROSS, K.C., *Chief Commissioner.*
 HUGH WARDROPE, *Assistant Chief Commissioner.*
 A. SYLVESTRE, K.C., *Deputy Chief Commissioner.*
 J. A. STONEMAN, *Commissioner.*
 G. A. STONE, *Commissioner.*
 F. M. MACPHERSON, *Commissioner.*

In pursuance of the powers vested in it under Sections 256, 257 and 287 of the Railway Act, and of all other powers possessed by the Board in this behalf and upon the report and recommendation of the Chief Engineer of the Board—

It is ordered that, until further notice, the specifications for signals of the wigwag type at highway crossings are and shall be as follows:—

1. *Mounting.*

(a) The assembly and painting of apparatus shall conform to the Board's drawing entitled "Highway Grade Crossing Signals of Wigwag Type," dated August 10, 1945.

(b) The "Railway Crossing" sign and signal shall be mounted on the same post.

(c) A signal shall be placed on each side of the track.

2. *Operating time.*

Automatic signal devices used to indicate the approach of trains shall so indicate for not less than twenty seconds before the arrival of the fastest train operated over the crossing.

Circuits for automatic operation of wigwag signals shall be so arranged that signals will operate until rear of train reaches or clears the crossing.

4. *Lights.*

Signal lights shall shine in both directions along the highway.

5. *Lenses or Roundels.*

Lenses or roundels shall be five inches diameter and shall be in accordance with A. A. R. Signal Section Specification No. 69.

6. *Range and Spread.*

The signal light, when the disc is suspended vertically, shall have a range, at night, of fifteen hundred feet through a total angle of not less than 30 degrees when a 10-watt lamp rated at 1,000 hours is burned at rated voltage.

7. *Cycles.*

Movement from one extreme to the other and back constitutes a cycle. The number of cycles per minute shall be 30 minimum, 45 maximum.

8. *Bell.*

Bell shall be used when specified and shall be in accordance with A. A. R. Signal Section Specification No. 44.

9. Every highway crossing signal upon the line of any railway company subject to the legislative authority of the Parliament of Canada, installed for the purpose of protection, shall be efficiently maintained by the railway company upon whose line the protection is installed, and shall be inspected at frequent intervals, but the interval between such inspections shall not exceed a period of forty-eight hours, and the method of test shall be such as will indicate whether or not the signal is in good working order. If the highway crossing signal fails to operate, or operates continuously, a flagman shall be placed at such crossing at once, whose duty it shall be properly to protect the same until such highway crossing signal is repaired. Notice of such non-repair shall be given at once to the station agent nearest to such highway crossing signal, whose duty it shall be to report the matter at once to the department having charge of the operation and repair of such highway crossing signals.

10. That in any case where the Board orders a highway crossing signal to be installed, a plan showing the layout must be filed for the approval of an Engineer of the Board.

11. That failure to place a watchman as required by these regulations will subject the defaulter to a fine of \$50, payment of which may be ordered by the Board upon proof of the offence.

12. That General Orders Nos. 468, 521 and 553, dated respectively March 12, 1929, November 2, 1933, and March 26, 1936, made herein, be, and they are hereby, rescinded.

J. A. CROSS,

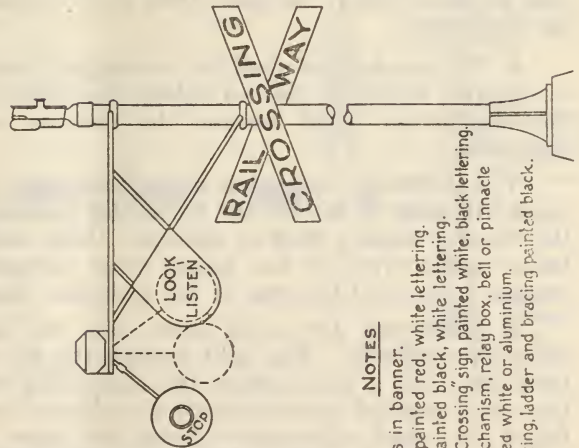
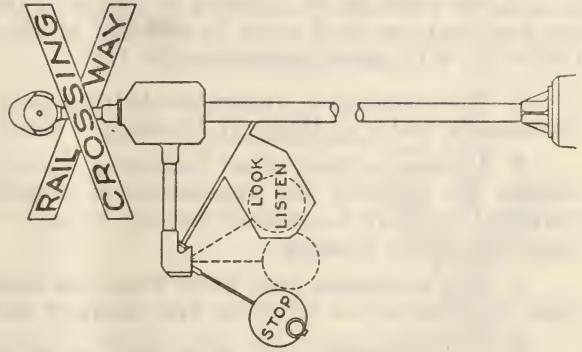
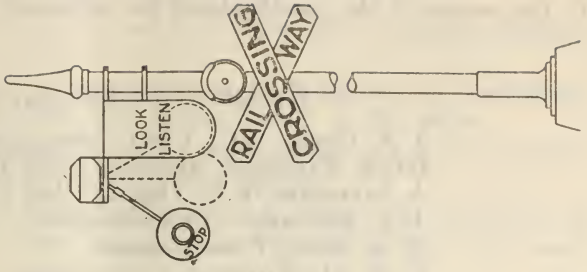
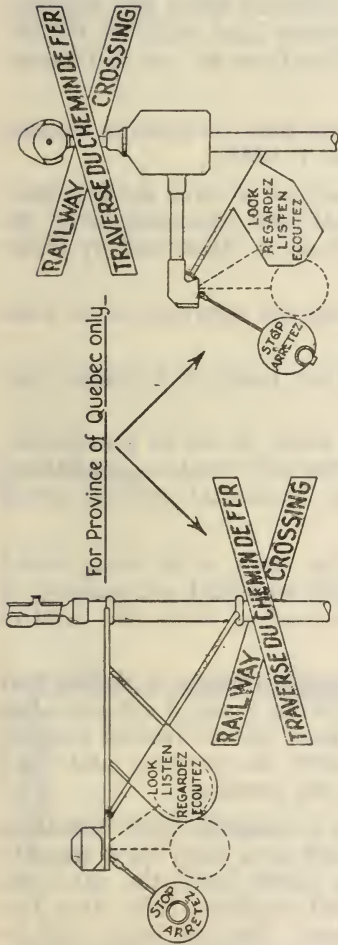
Chief Commissioner.

HIGHWAY GRADE CROSSING SIGNAL

OF

WIGWAG TYPE

August 10, 1945.



NOTES

- Red lens in banner.
- Banner painted red, white lettering.
- Shield painted black, white lettering.
- Railway Crossing sign painted white, black lettering.
- Mast mechanism, relay box, bell or pinnacle painted white or aluminium.
- Base casting, ladder and bracing painted black.

GENERAL ORDER No. 676

In the matter of the specifications for automatic gates at highway crossings.

File No. 27214.20

THURSDAY, the 29th day of November, A.D. 1945.

J. A. CROSS, K.C., *Chief Commissioner.*

HUGH WARDROPE, *Assistant Chief Commissioner.*

A. SYLVESTRE, K.C., *Deputy Chief Commissioner.*

J. A. STONEMAN, *Commissioner.*

G. A. STONE, *Commissioner.*

F. M. MACPHERSON, *Commissioner.*

In pursuance of the powers vested in it under Sections 256, 257 and 287 of the Railway Act, and of all other powers possessed by the Board in this behalf and upon the report and recommendation of the Chief Engineer of the Board—

It is ordered that, until further notice, when automatic gates are installed at highway crossings as adjuncts to signals of the flashing light type, the following specifications shall apply in addition to the specifications set out in General Order No. 607, dated September 29, 1941:

1. The assembly of apparatus shall conform to the Board's drawing entitled "Automatic Gates at Highway Crossings," dated June 7, 1945.

2. Automatic gates when indicating the approach of a train shall present toward the highway the appearance of a horizontal arm extending over the travelled roadway a sufficient distance to cover the lane or lanes used by traffic approaching the crossing.

3. The automatic gate arms when not indicating the approach of a train shall not obstruct or interfere with highway traffic.

4. The automatic gate arms shall be mounted on posts or housings containing the gate arm operating mechanisms.

5. The design of the gate operating mechanism shall, as far as practicable, be such as to insure proper operation during unfavourable weather conditions, and, if out of order, the gate arms shall assume the horizontal position across the roadway.

6. The mechanism shall be so designed that if the arms, while being raised or lowered, strike or foul an object, they will readily stop and, on removal of the obstruction, shall assume the position corresponding with the control apparatus.

7. Circuits for operation of the automatic gates shall be so arranged that gates will start to assume the horizontal position between 3 and 5 seconds after the warning signals start to operate. Gates shall reach full horizontal position before the arrival of the fastest train operated over the crossing and shall remain down until the rear of the train has cleared the crossing.

8. Each gate arm shall have three red lights shining in both directions along the highway. The light nearest the tip of each arm shall burn steadily from the time a train enters the controlling track circuit until the gate arm has again reached approximately the clear or vertical position. The other two lights shall flash alternately during the same period. The tip light shall be located not less than 14 inches or more than 36 inches from the tip of the arm. The other two lights shall be so placed with relation to the tip light and each other that no vehicle within the travelled highway lane or lanes approaching the crossing can obscure all three lights from the vision of drivers of following vehicles.

9. The bottom of gate arms, when in the horizontal position, shall be not less than 3, nor more than 4 feet above the crown of the roadway.

10. The gate arms shall be painted on both sides with alternate diagonal stripes of white and black.

11. The automatic highway crossing signals shall operate in accordance with Board's General Order No. 607, and independently of the gates.

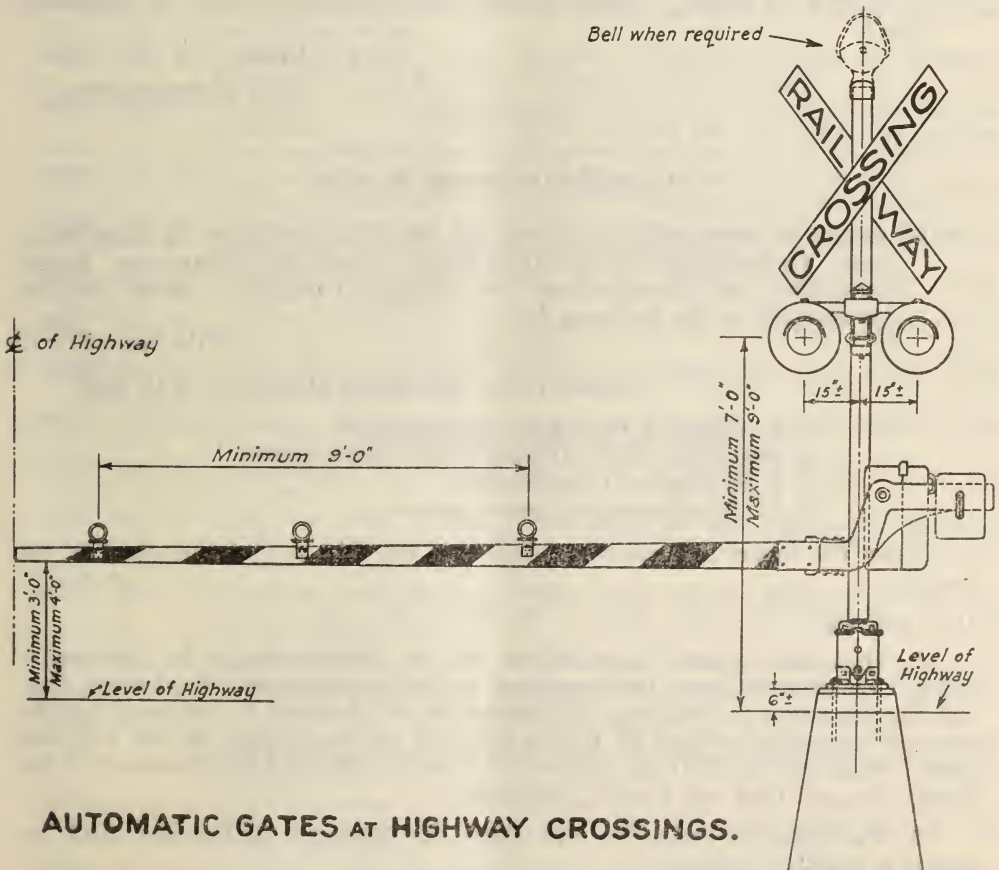
12. Details of the signals, gates, operating mechanisms, and control circuits shall be in accordance with A.A.R. recommended practice.

13. The gate arms shall operate uniformly, smoothly, and complete all movements without rebound or slap, and be securely held when in the raised position.

14. Each individual gate post shall be provided with independent operating mechanism, and housing to be of sufficient size to allow ready inspection, adjustment and repairs.

15. The highway traffic lanes in the vicinity of the crossing shall be distinctly marked.

J. A. CROSS,
Chief Commissioner.



GENERAL ORDER No. 677

In the matter of the application of Canadian Industries Limited for an Order amending the Regulations for the Transportation of Explosives and Other Dangerous Articles by Freight to permit the use of fibreboard boxes for shipping Primacord Fuse.

File No. 1717.87.35

THURSDAY, the 29th day of November, A.D. 1945.

J. A. CROSS, K.C., *Chief Commissioner.*

HUGH WARDROPE, *Assistant Chief Commissioner.*

A. SYLVESTRE, K.C., *Deputy Chief Commissioner.*

J. A. STONEMAN, *Commissioner.*

G. A. STONE, *Commissioner.*

F. M. MACPHERSON, *Commissioner.*

Upon the recommendation of the Director of Operation of the Board—

It is ordered that the Regulations for the Transportation of Explosives and Other Dangerous Articles by Freight be, and they are hereby, amended by striking out paragraph 72-4 on page 27 thereof, and substituting therefor the following:

“72-4. Packing. Strong wooden boxes, wooden barrels or fibreboard boxes.”

J. A. CROSS,
Chief Commissioner.

GENERAL ORDER No. 678

In the matter of proposed Regulations for the Transportation by Express of Acids, Compressed Gases, Inflammables, Oxidizing Substances, Explosives, Etc., and Specifications for Shipping Containers, under Sections 349 and 350 of the Railway Act.

File No. 1717.12

MONDAY, the 3rd day of December, A.D. 1945.

J. A. CROSS, K.C., *Chief Commissioner.*

A. SYLVESTRE, K.C., *Deputy Chief Commissioner.*

J. A. STONEMAN, *Commissioner.*

F. M. MACPHERSON, *Commissioner.*

Upon the report and recommendation of the Director of Operation of the Board—

It is ordered:

1. That the proposed Regulations for the Transportation by Express of Acids, Compressed Gases, Inflammables, Oxidizing Substances, Explosives, Etc., and Specifications for Shipping Containers, to be observed by shippers, and by express companies subject to the jurisdiction of the Board, on file with the Board under file No. 1717.12, marked “B” and certified by the Secretary of the Board, be, and they are hereby, approved.

2. That General Order No. 673, dated the 23rd day of October, 1945, be, and it is hereby, rescinded.

HUGH WARDROPE,
Assistant Chief Commissioner.

SUMMARY OF ORDERS ISSUED BY THE BOARD

- 66728 Nov. 28—Requiring the C.N.R. to appoint and maintain a station agent at Pine River, Man., on or before June 1, 1946.
- 66729 Nov. 28—Approving plan 480/72A2, dated Winnipeg, Nov. 10, 1945, showing proposed signal protection at Loop Junction, of Saskatoon Loop Line with Saskatoon Terminals Subd.
- 66730 Nov. 29—Declaring C.N.R. crossing of highway first west of Courtland Station, Ont., mileage 90.11 Cayuga Subdivision, protected to Board's satisfaction.
- 66731 Nov. 29—Declaring Pere Marquette Railway crossing of Provincial Highway No. 3 in the Village of Oldcastle, mileage 7.92 No. 1 Subd., protected to Board's satisfaction.
- 66732 Nov. 29—Declaring C.N.R. crossing of highway known as Pitries Public crossing, Tracadie, N.B., mileage 73.23 Caraquet Subd., protected to Board's satisfaction.
- 66733 Nov. 29—Declaring C.P.R. crossing south of Leduc Station, known as Main Street Crossing, in the Village of Leduc, Alta., mileage 79.1 Leduc Subd., protected to Board's satisfaction.
- 66734 Nov. 29—Authorizing C.N.R. and C.P.R. to operate their engines, cars and trains over extension of branch line of railway of the Toronto Harbour Commissioners serving Disher Steel Construction Company, Limited, in the City of Toronto, Ont.
- 66735 Nov. 29—Approving Supplement No. 2, dated at Montreal, Oct. 17, 1945, and St. Andre Avellin, Oct. 30, 1945, to Agreement dated June 6, 1939, between the Bell Telephone Company of Canada and la Compagnie de Telephone de la Petite Nation.
- 66736 Nov. 30—Approving location of pipe lines, etc., of McColl-Frontenac Oil Company, Limited, near C.N.R. tracks at Portage la Prairie, Man.
- 66737 Nov. 30—Dispensing with notice in *Canada Gazette*, etc. in the matter of joint application of New York Central Railroad Co. and C.P.R. for sanction of an agreement *re* joint use of certain trackage at St. Thomas, Ont.
- 66738 Nov. 30—Recommending for sanction an agreement between the New York Central Railroad Co. and C.P.R. *re* joint use of trackage at St. Thomas, Ont.
- 66739 Nov. 30—Approving agreement dated May 26, 1945, between the Bell Telephone Company of Canada and the Canadian Marconi Co.
- 66740 Nov. 30—Approving location of pipe lines, etc., of Imperial Oil Limited near C.P.R. tracks at Champion, Alta.
- 66741 Nov. 30—Approving location of pipe lines, etc., of North Star Oil Limited near C.N.R. tracks at Endeavour, Sask.
- 66742 Nov. 30—Approving location of pipe lines, etc., of Imperial Oil Limited near C.P.R. tracks at Coderre, Sask.
- 66743 Nov. 30—Declaring New York Central Railroad crossing of Queen Street in the Town of Tilbury, Ont., protected to Board's satisfaction.
- 66744 Nov. 30—Authorizing C.N.R. to close 38th Street crossing in the R.M. of Cory No. 344, Man.
- 66745 Dec. 1—Approving under Maritime Freight Rates Act tolls published in Item No. 2410G of Supplement No. 68 to Tariff C.T.C. No. 1292 filed by Canadian Freight Association under Sec. 3.
- 66746 Dec. 1—Approving under Maritime Freight Rates Act tolls published in Item No. 1215 of 20th Revised page 54 to Tariff C.T.C. No. E4757 filed by the C.P.R. under Sec. 9.
- 66747 Dec. 1—Approving under Maritime Freight Rates Act tolls published in Items No. 3110B and No. 3925A of Supplement No. 13 to Tariff C.T.C. No. E5043 filed by the C.P.R. under Sec. 9.
- 66748 Dec. 1—Approving under Maritime Freight Rates Act tolls published in Item 3110A of Supplement No. 11 to Tariff C.T.C. No. E5043 filed by the C.P.R. under Sec. 9.
- 66749 Dec. 1—Approving under Maritime Freight Rates Act tolls published in Item 3910A of Supplement No. 10 to Tariff C.T.C. No. E5043 filed by the C.P.R. under Sec. 9.
- 66750 Dec. 1—Approving under Maritime Freight Rates Act tolls published in Item No. 228 of 17th Revised page 23 to Tariff C.T.C. No. E4757 filed by the C.P.R. under Sec. 9.

- 66751 Dec. 3—Declaring New York Central Railroad crossing of Main Street in the Village of Woodslee, Ont., protected to Board's satisfaction.
- 66752 Nov. 30—Declaring Sydney & Louisburg Railway crossing of Tower Road in the County of Cape Breton, N.S., protected to Board's satisfaction.
- 66753 Dec. 1—Declaring C.N.R. crossing of Peppet Street, North Sydney, N.S., protected to Board's satisfaction.
- 66754 Dec. 3—Approving location of pipe lines, etc., of McColl-Frontenac Oil Company Limited near C.P.R. tracks at Plum Coulee, Man.
- 66755 Dec. 3—Declaring C.N.R. crossing of Vinet Street in the City of Montreal, Que., protected to Board's satisfaction.
- 66756 Dec. 4—Approving clearances at the entrance and inside the Sales Pulp plant of the Ontario Paper Company Limited at Thorold, Ont.
- 66757 Dec. 3—Extending time within which flashing lights signals and bell are to be installed by C.N.R. at crossing of Haig Boulevard in the Twp. of Toronto, Ont.
- 66758 Dec. 1—Authorizing Hudson Chamber of Commerce, Hudson, Ont. to install a two-inch water pipe one and one-half feet below the base of rail under main line of the C.N.R. at Hudson, Ont.
- 66759 Dec. 3—Declaring C.N.R. crossing of Barton Street in the City of Hamilton, Ont., protected to Board's satisfaction; present speed limitation of ten miles an hour to be maintained.
- 66760 Dec. 4—Declaring C.N.R. crossing of highway first west of Belle River, Ont., mileage 90.23 Chatham Subd., protected to Board's satisfaction.
- 66761 Dec. 4—Declaring C.N.R. crossing of the intersection of King and Spring Streets in the Town of Cobourg, Ont., protected to Board's satisfaction; said crossing to be protected by a flagman between the hours of 8.00 a.m. and 8.00 p.m.; all movements between said hours to be flagged over by one of train crew.
- 66762 Dec. 5—Approving under Maritime Freight Rates Act tolls published in tariffs filed by the C.N.R. under Sec. 3.
- 66763 Dec. 4—Approving clearances at siding serving Zephyr Looms and Textiles Limited at Ormstown, Que. (C.N.R.)
- 66764 Dec. 5—Declaring Grand River Railway crossing of Kerr Street, Galt, Ont., protected to Board's satisfaction; speed limitation of ten miles per hour on southbound trains to be maintained; northbound trains to stop before proceeding over crossing.
- 66765 Dec. 3—Approving plan P-21-7-87-3, revised to March 10, 1939. (C.N.R.)
- 66766 Dec. 4—Authorizing C.N.R. to construct their railway across National Avenue, District of New Westminster, B.C.
- 66767 Dec. 4—Authorizing C.P.R. to use and operate Bridge No. 52.5 Quebec Subd.
- 66768 Dec. 4—Authorizing C.P.R. to use and operate Bridge No. 29.5 Newport Subd.
- 66769 Dec. 3—Authorizing additional protection at crossing of Highway No. 35 being first crossing west of Wadena Station, Sask. mileage 86.8 Margo Subd. (C.N.R.)
- 66770 Nov. 30—Approving location of pipe lines, etc., of Imperial Oil Limited near C.P.R. tracks at Carmangay, Alta.
- 66771 Dec. 6—Approving location of pipe lines, etc., of American Can Company near C.N.R. tracks at Simcoe, Ont.
- 66772 Dec. 7—Authorizing C.N.R. to operate over pedestrian subway in the vicinity of Nelson Street, Town of Hawkesbury, Ont.
- 66773 Dec. 7—Declaring C.N.R. crossing of William Street, Town of North Bay, Ont., protected to Board's satisfaction.
- 66774 Dec. 7—Amending Order No. 65393 dated Nov. 1, 1944, showing protection to be provided at crossing of Wilson Street, Woodstock, Ont., mileage 49.26 Dundas Subd. (C.N.R.)
- 66775 Dec. 7—Authorizing C.N.R. to install a wigwag signal at crossing of de la Rouseliere Street east of Pointe aux Trembles, Que.
- 66776 Dec. 6—Amending Order No. 66688 dated Nov. 15, 1945, showing proposed highway crossing between the NW $\frac{1}{4}$ of Sec. 25 and SW $\frac{1}{4}$ of Sec. 26, Twp. 35, Rge. 20, west of the 4th meridian, near Big Valley, Alta.
- 66777 Dec. 10—Authorizing C.N.R. to operate under overhead highway bridge at mileage 69.7 La Tuque Subd., Que.

- 66778 Dec. 10—Approving under Maritime Freight Rates Act tolls published in Item 126 of first revised page 12 to Tariff C.T.C. No. 831 filed by the Temiscouata Railway Company under Sec. 9.
- 66779 Dec. 10—Approving under Maritime Freight Rates Act tolls published in tariffs filed by the C.N.R. under Sec. 3., namely Supplement No. 12 to Tariff C.T.C. No. E.3834 and Supplement No. 6 to Tariff C.T.C. No. E.3888.
- 66780 Dec. 11—Declaring C.P.R. crossing of St. Eugene Street first north of station at Gracefield, Que., mileage 57.89 Maniwaki Subd., protected to Board's satisfaction.
- 66781 Dec. 11—Declaring C.N.R. crossing of Ormond Street, Town of Brockville, Ont., protected to Board's satisfaction.
- 66782 Dec. 12—Declaring C.P.R. crossing first immediately east of Vankleek Hill, Ont. mileage 33.79 Montreal-Ottawa Subd., protected to Board's satisfaction; present speed limitation of ten miles per hour to be maintained.
- 66783 Dec. 12—Declaring C.N.R. crossing of Market Street in the Village of Actonvale, Que., protected to Board's satisfaction.
- 66784 Dec. 12—Approving location of pipe lines, etc., of Imperial Oil Limited near C.P.R. tracks at Lorrainville, Que.
- 66785 Dec. 8—Declaring Vancouver and Lulu Island Railway crossing of Broadway Avenue, Vancouver, B.C., protected to Board's satisfaction; all trains required to come to a stop before passing over crossing.
- 66786 Dec. 12—Approving under Maritime Freight Rates Act tolls published in Tariff C.T.C. No. 106 filed by the Sydney & Louisburg Railway Co. under Sec. 9.
- 66787 Dec. 13—Authorizing C.N.R. and Montreal and Southern Counties Railway Co. to operate their trains and cars through interlocking plant at Windmill Point, Montreal, P.Q.
- 66788 Dec. 12—Approving relocation of pipe lines, etc., of McColl-Frontenac Oil Company, Limited, near C.N.R. tracks at Brandon, Man.
- 66789 Dec. 12—Approving location of pipe lines, etc., of McColl-Frontenac Oil Company, Limited, near C.N.R. tracks at Edmonton, Alta.
- 66790 Dec. 12—Approving location of pipe lines, etc., of North Star Oil Limited near C.P.R. tracks at Neilburg, Sask.
- 66791 Dec. 12—Approving location of pipe lines, etc., of North Star Oil Limited near C.P.R. tracks at Meath Park, Sask.
- 66792 Dec. 12—Approving location of pipe lines, etc., of North Star Oil Limited near C.N.R. tracks at Paradise Hill, Sask.
- 66793 Dec. 12—Approving location of pipe lines, etc., of North Star Oil Limited, near C.P.R. tracks at Lac Vert, Sask.
- 66794 Dec. 13—Declaring C.P.R. crossing of Shaughnessy Street first crossing east of station at Coquitlam, B.C., protected to Board's satisfaction; present speed limitation of ten miles per hour, to be maintained.
- 66795 Dec. 13—Declaring C.P.R. crossing of highway first west of station at Fleming, Sask., protected to Board's satisfaction.
- 66796 Dec. 13—Approving location of pipe lines, etc., of Imperial Oil Limited near C.N.R. tracks at Canwood, Sask.
- 66797 Dec. 13—Declaring C.N.R. crossing of highway second crossing west of the station at St. Agapit, Que. mileage 13, Danville Subd., protected to Board's satisfaction.
- 66798 Dec. 13—Declaring C.N.R. crossing of highway first east of station at Kelso, Sask., protected to Board's satisfaction.
- 66799 Dec. 13—Declaring C.P.R. crossing of Rogers Street, Vancouver, B.C., protected to Board's satisfaction; present speed limitation of ten miles per hour to be maintained.
- 66800 Dec. 13—Declaring C.N.R. crossing of highway first west of station at Makamik, Que., mileage 15.8 Makamik Subd., protected to Board's satisfaction.
- 66801 Dec. 13—Declaring C.N.R. crossing of highway second public crossing east of station at Upton, Que., mileage 28.19 St. Hyacinthe Subd., protected to Board's satisfaction.
- 66802 Dec. 13—Declaring C.N.R. crossing of highway first east of station at Villemontel, Que., mileage 55.9 Amos Subd., protected to Board's satisfaction.
- 66803 Dec. 13—Amending Order No. 66611, dated Oct. 26, 1945, showing proposed installation of pipe lines, etc., of Wilton Co-Operative Association, Ltd., at Lashburn, Sask. (C.N.R.)

- 66804 Dec. 13—Extending time within which Pere Marquette Railway Company was required to install protection at crossing of Provincial Highway No. 2 near Chatham, Ont. about mileage 18.91 Sarnia and Erieau Subd., Ont.
- 66805 Dec. 13—Declaring C.N.R. crossing of Poirier Street in the Village of Charny, Que., protected to Board's satisfaction.
- 66806 Dec. 13—Declaring C.N.R. crossing of highway mileage 113.3 Minaki Subd., Man., protected to Board's satisfaction.
- 66807 Dec. 15—Authorizing C.P.R. and Pere Marquette Railway Co. to operate their trains through interlocking plant at mileage 63.71 Windsor Subd., Chatham, Ont.
- 66808 Dec. 14—Declaring C.N.R. crossing of highway at mileage 40.37 Drumheller Subd., Alta., protected to Board's satisfaction.
- 66809 Dec. 14—Declaring C.P.R. crossing of highway first north of station at Russell, Man., mileage 11.2 Russell Subd., protected to Board's satisfaction.

The Board of Transport Commissioners for Canada

Judgments, Orders, Regulations and Rulings

Vol. XXXV

Ottawa, January 15, 1946

No. 20

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Application of the Municipal Council of the Village of Charny, in the Province of Quebec, for an Order directing Canadian National Railways to render the Curve Crossing on Lemieux Street, East of St. John Street, in the Village of Charny, a public crossing.

File No. 44393'

His Worship, Mayor James Hudon represented the Village of Charny, and Mr. C. V. Darveau, K.C., and Mr. A. K. Dysart appeared for Canadian National Railways.

Heard at the City of Quebec on Tuesday, December 4th, 1945.

JUDGMENT

Cross, *Chief Commissioner:*

This is, in effect, an application by the Municipal Council of the Village of Charny, in the Province of Quebec, hereinafter referred to as the Village, for leave to construct a highway across the railway of Canadian National Railways, hereinafter referred to as the Railways, at the point which the applicant Village describes as the "Curve Crossing" on Lemieux Street, East of St. John Street, in the said Village of Charny. The location is at Mileage 0.2 of Bridge Subdivision, Levis Division of the Railways.

The present crossing at the point in question is shown on a map filed by the Railways as a farm crossing. This present crossing has been in existence for over thirty years but has never been legalized by the Board. It was originally used by farmers who owned land at the east end of the Village of Charny. In recent years certain persons who constructed dwellings on the east side of the crossing have been and are now utilizing the crossing. This crossing over the railway is used by a considerable number of people and in much the same manner as if it were a duly authorized public highway crossing.

The Village complains that the crossing is, on occasions, blocked by the trains of the Railways for considerable periods of time and that thereby the people who are accustomed to use the crossing are put to much inconvenience

and delay. If the crossing is made a public highway crossing the Railways would, by reason of Section 311 of the Railway Act, be precluded from obstructing the crossing for a longer period than five minutes at any one time.

The map or plan of the Village of Charny shows as a street Lemieux Street running east and west and extending only to the boundary of the right of way of the Railways on both the east and west side thereof. While Lemieux Street is thus shown as a street and is, apparently, used as such for all practical purposes, the fact remains that Lemieux Street on both sides of the Railways' right of way has never been verbalized as a municipal road or street. Under these circumstances I do not think that the Board can authorize the Village to construct a highway across the railway at the point in question.

The application of the Village must, therefore, be dismissed.

It would, I think, not be out of place to suggest that the Village should take appropriate proceedings at once to have Lemieux Street duly verbalized as a public municipal street or highway, on both sides of the railway right of way. When this has been done the Village will be at liberty to apply again to the Board. The Board would then be in a position to consider the whole question relating to the construction of the proposed public crossing, on the merits.

Ottawa, December 12, 1945.

J. A. CROSS

I concur,

A. Sylvestre,

F. M. MacPherson.

(Traduction)

LA COMMISSION DES TRANSPORTS DU CANADA

Requête du conseil municipal du village de Charny, province de Québec, demandant qu'il soit rendu une ordonnance enjoignant au Canadien-National de convertir le passage connu sous le nom de "Curve crossing" situé à l'est de la rue St-Jean, à Charny, P.Q., en un passage public.

Dossier n° 44393

Son honneur le maire J. Hudon représenta le village de Charny, et

Me C.-V. Darveau, C.R., et Me A.-K. Dysart comparurent pour le Canadien-National.

Cause entendue à Québec, mardi le 4 décembre 1945.

JUGEMENT

Cross, *Commissaire en chef*:

Il s'agit ici, en effet, d'une requête du conseil municipal du village de Charny, province de Québec, ci-après appelé le "Village", demandant l'autorisation de construire un passage public à travers la voie du Canadien-National, ci-après appelé "le chemin de fer", à un endroit désigné par le village sous le nom de "Curve crossing" sur la rue Lemieux, à l'est de la rue St-Jean, dans ledit village de Charny, et situé au mille 0.2 de la subdivision Bridge, division Lévis, du chemin de fer.

Le passage actuel à l'endroit en question est indiqué sur la carte produite par le chemin de fer comme un passage de ferme. Ce passage existe depuis au delà de trente ans mais n'a jamais été autorisé par la Commission. Il était en premier lieu utilisé par les cultivateurs qui étaient propriétaires des terrains

situés à l'extrémité est du village de Charny. Dans ces dernières années, certaines personnes qui avaient construit des résidences du côté est du passage ont utilisé et utilisent encore ce passage. Il est utilisé par un nombre considérable de personnes à peu près de la même manière que s'il constituait un passage de voie publique dûment autorisé.

Le village se plaint du fait que le passage est de temps en temps obstrué par les convois du chemin de fer durant des périodes de temps considérables et que, en conséquence, les personnes qui ont l'habitude d'utiliser ledit passage sont beaucoup incommodées et retardées. Si ce passage était converti en un passage public, le chemin de fer, en vertu de l'article 311 de la Loi des chemins de fer, ne pourrait pas obstruer le passage durant des périodes de plus de cinq minutes à la fois.

La carte du village de Charny indique comme rue la rue Lemieux, allant de l'est à l'ouest et n'allant que jusqu'à la limite de l'emprise du chemin de fer des deux côtés, est et ouest.

Bien que la rue Lemieux soit indiquée comme étant une rue et qu'elle soit apparemment utilisée comme telle pour toutes fins pratiques, il n'en est pas moins vrai que la rue Lemieux, des deux côtés de l'emprise du chemin de fer, n'a jamais été verbalisée comme route ou rue municipale. Dans les circonstances, je ne crois pas que la Commission puisse autoriser le village à construire un passage de voie publique à travers le chemin de fer à l'endroit en question.

Le requête du village doit, en conséquence, être refusée.

Je crois qu'il ne serait pas mal à propos de suggérer que le village prenne dès maintenant les mesures nécessaires aux fins de faire verbaliser la rue Lemieux des deux côtés de l'emprise du chemin de fer comme rue ou route publique municipale. Après que la rue aura été verbalisée, le village sera libre d'adresser une nouvelle requête à la Commission qui sera alors en mesure de considérer toute la question de construction du passage public projeté d'après ses mérites.

Ottawa, le 12 décembre 1945.

J. A. CROSS

J'agrée,

A. Sylvestre,

F. M. MacPherson.

ORDER No. 66833

In the matter of the application of the Municipal Council of the Village of Charny, in the Province of Quebec, for an Order directing Canadian National Railways to render the Curve Crossing on Lemieux Street, East of St. John Street, in the Village of Charny, a public crossing:

File No. 44393

MONDAY, the 17th day of December, A.D., 1945.

J. A. CROSS, K.C., *Chief Commissioner*.

A. SYLVESTRE, K.C., *Deputy Chief Commissioner*.

F. M. MACPHERSON, *Commissioner*.

Upon hearing the application at the sittings of the Board held at the City of Québec, P.Q., on Tuesday, December 4, 1945, in the presence of a representative of the Applicants and Counsel for the Canadian National Railways, and what was alleged:—

It is ordered: That the application be, and it is hereby, dismissed.

J. A. CROSS,
Chief Commissioner.

ORDER No. 66843

In the matter of the application of William D. Branson Limited, Toronto, Ont., and The Canadian Fruit Wholesalers' Association, Toronto, Ont., with respect to Items 184 and 2245 in Canadian Pacific Railway tariff C.T.C. No. E.4380 as amended to be effective December 26th, 1945.

File No. 44599

THURSDAY, the 20th day of December, A.D. 1945.

J. A. CROSS, K.C., *Chief Commissioner.*
 HUGH WARDROPE, *Asst. Chief Commissioner.*
 A. SYLVESTRE, K.C., *Deputy Chief Commissioner.*
 J. A. STONEMAN, *Commissioner.*
 G. A. STONE, *Commissioner.*

Upon reading what is filed in support of the applications, and the recommendation of the Director of the Traffic Department of the Board—

It is ordered: That the cancellation of proportional rates from Detroit, Michigan:

On Bananas, carloads, to Campbellton, N.B., Halifax, N.S., Moncton, N.B., New Glasgow, N.S., Sydney, N.S., and Yarmouth, N.S., as per Item 184, 15th Revised Page 54, Canadian Pacific tariff C.T.C. No. E.4380;

And on Vegetables and Citrus Fruits, carloads, to Campbellton, N.B., Charlottetown, P.E.I., Halifax, N.S., Moncton, N.B., New Glasgow, N.S., and Sydney, N.S., as per Item 2245, 45th Revised Page 127, Canadian Pacific tariff C.T.C. No. E.4380,

be, and they are hereby, suspended until further order of the Board.

J. A. CROSS,
Chief Commissioner.

ORDER No. 66860

In the matter of the application of the Canadian Freight Association, under the provisions of Part V of The Transport Act, 1938, for approval of an Agreed Charge dated November 22, 1945, between the Canadian National Railways, Canadian Pacific Railway; and Alberta Hi-Way Refineries, Limited, Imperial Oil Limited, McColl-Frontenac Oil Company, Limited, and North Star Oil Limited on petroleum products as specified therein, from Calgary, Alberta, to points in the Provinces of Alberta and Saskatchewan specified therein:

File No. 40994.4

WEDNESDAY, the 26th day of December, A.D. 1945.

J. A. CROSS, K.C., *Chief Commissioner.*
 HUGH WARDROPE, *Asst. Chief Commissioner.*
 J. A. STONEMAN, *Commissioner.*
 G. A. STONE, *Commissioner.*

Upon the report and recommendation of the Director, Traffic Department of the Board, notice of the said application having been mailed to the parties named in General Order No. 581, dated January 21, 1939, and no objections having been filed—

It is ordered: That the said Agreed Charge between the Canadian National Railways, Canadian Pacific Railway and Alberta Hi-Way Refineries Limited,

Imperial Oil Limited, McColl-Frontenac Oil Company, Limited, and North Star Oil Limited, on petroleum products as specified therein, from Calgary, Alberta, to points in the Provinces of Alberta and Saskatchewan specified therein, on file with the Board under file No. 40994.4 be, and it is hereby, approved; the same to become operative on the 1st day of January, 1946; such approval to be for the period from the said 1st day of January, 1946, to the 31st day of December, 1946, both days inclusive.

J. A. CROSS,
Chief Commissioner.

ACCIDENTS REPORTED TO THE OPERATING DEPARTMENT
BOARD OF TRANSPORT COMMISSIONERS FOR CANADA,
NOVEMBER, 1945

Railway Accidents	211 with 17 killed and 253 injured
Level Crossing Accidents	49 with 15 killed and 78 injured
Totals	260 with 32 killed and 331 injured

	Killed	Injured
Passengers	1	46
Employees	6	201
Others	25	84
Total	32	331

DETAILS OF ACCIDENTS AT HIGHWAY CROSSINGS

Accidents	K.	I.	NEW BRUNSWICK
1	—	4	Automobile drove onto crossing in front of approaching train and was struck. Licence NB.27-832.
1	—	4	Track Motor Car struck automobile. Licence NB.20068.
QUEBEC			
1	—	2	Automobile ran into side of train. Licence Que.T-4705.
1	1	2	Automobile ran into side of train. Licence Que.164-230.
1	1	6	Automobile drove onto crossing in front of approaching train and was struck. Licence Que.171-252.
1	—	2	Automobile ran into side of train. Licence Que.110-85.
1	—	1	Automobile drove onto crossing in front of approaching train and was struck. Licence Que.156-334.
1	—	1	Auto Truck drove onto crossing in front of approaching train and was struck. Licence Que.F-2294.
1	1	—	Auto Truck drove onto crossing in front of approaching train and was struck. Licence Que.F-29529.
1	—	2	Automobile drove onto crossing in front of approaching train and was struck. Licence Que.116-488.
1	2	—	Pedestrians walked onto crossing in front of approaching train and were struck.
1	—	1	Automobile ran into side of train. Licence Que.86-810.
1	—	1	Automobile ran into side of train. Licence Ont.4-L-33.
ONTARIO			
1	2	—	Automobile ran through gates in front of approaching train and was struck. Licence Ont.533-S-2.
1	—	7	Automobile drove onto crossing in front of approaching train and was struck. Licence Ont.7-E-977.
1	3	—	Automobile drove onto crossing in front of approaching train and was struck. Licence Ont.248-K-6.
1	—	1	Automobile drove onto crossing in front of approaching train and was struck. Licence Ont.1-V-519.
1	—	1	Automobile ran into side of train. Licence Ont.34-N-72.
1	—	4	Automobile ran into side of train. Licence Ont.407-E-6.
1	—	1	Automobile drove onto crossing in front of approaching train and was struck. Licence Ont.6-J-435.
1	—	1	Automobile ran into side of train. Licence Ont.20-U-9.
1	1	3	Automobile drove onto crossing in front of approaching train and was struck. Licence Mich.BW-9609.
1	—	1	Automobile ran into side of train. Licence Ont.9-N-768.
1	1	—	Auto Truck drove onto crossing in front of approaching train and was struck. Licence Ont.46920-C.
1	—	1	Automobile ran into side of train. Licence Ont.632-L-6.
1	—	1	Auto Truck drove onto crossing in front of approaching train and was struck. Licence not given.
1	—	2	Auto Truck ran into side of train. Licence Ont.685-62-C.
1	—	2	Auto Truck ran into side of train. Licence Ont.57743-C.
1	—	1	Automobile ran into side of train. Licence Ont.826-V-1.
1	—	1	Automobile ran into side of train. Licence Ont.29-H-45.
1	1	—	Pedestrian walked onto crossing in front of approaching train and was struck.

Accidents K. I.

MANITOBA

- 1 — 1 Automobile drove onto crossing in front of approaching train and was struck. Licence Man.59-553.
- 1 — 3 Auto Truck drove onto crossing in front of approaching train and was struck. Licence Man.14422.
- 1 — 1 Auto Truck drove onto crossing in front of approaching train and was struck. Licence Man.T-6609.
- 1 — 1 Automobile drove onto crossing in front of approaching train and was struck. Licence Man.33906.

SASKATCHEWAN

- 1 — 1 Pedestrian crossed track ahead of train and was struck.
- 1 — 1 Automobile ran into side of train. Licence not given.
- 1 — 1 Track Motor car struck Auto Bus. Licence not given.
- 1 — 1 Pedestrian walked onto crossing in front of approaching train and was struck.

ALBERTA

- 1 — 1 Automobile ran into side of train. Licence not given.
- 1 — 1 Automobile drove onto crossing in front of approaching train and was struck. Licence not given.
- 1 — 1 Automobile drove onto crossing in front of approaching train and was struck. Licence not given.
- 1 — 1 Horse-drawn vehicle drove onto crossing in front of approaching train and was struck.
- 1 — 1 Auto Truck drove onto crossing in front of approaching train and was struck. Licence Alta.F-17766.
- 1 — 1 Auto Truck ran into side of train. Licence not given.

BRITISH COLUMBIA

- 1 — 1 Auto Truck ran into side of train. Licence B.C. C-1734.
- 1 — 4 Auto Truck drove onto crossing in front of approaching train and was struck. Licence B.C. N-2-035.
- 1 — 2 Auto Truck drove onto crossing in front of approaching train and was struck. Licence B.C. CJ-77.
- 1 — 4 Auto Truck drove onto crossing in front of approaching train and was struck. Licence B.C. C-1245.

Of the 49 accidents at Highway Crossings, 37 occurred at Unprotected Crossings and 12 at Protected Crossings. Twenty-seven of the Accidents occurred after Sunrise and Twenty-two after Sunset.

December 27, 1945.

SUMMARY OF ORDERS ISSUED BY THE BOARD

- 66810 Dec. 14—Approving location of pipe lines, etc., of Imperial Oil Limited near C.P.R. tracks at Kennedy, Sask.
- 66811 Dec. 14—Approving location of pipe lines, etc., of Imperial Oil Limited near C.P.R. tracks at Rocky Mountain House, Alta.
- 66812 Dec. 13—Declaring C.P.R. crossing of Provincial Highway No. 1 in the Village of Virden, Man., mileage 48 Broadview Subd., protected to Board's satisfaction.
- 66813 Dec. 13—Authorizing C.N.R. to remove McDougall Mills, located at mileage 120·2 Allanwater Subd., Ont., from their time tables and freight tariffs except tariffs for L.C.L. freight.
- 66814 Dec. 13 Extending time within which C.N.R. were required to install two automatic flashing lights and one bell at crossing of St. Athanase highway, first east of St. Pascal Station, Que.
- 66815 Dec. 14—Declaring C.P.R. crossing of McTavish Street in the City of Fort William, Ont., protected to Board's satisfaction.
- 66816 Dec. 14—Declaring C.N.R. crossing of Highway No. 11 first east of station at Hearst, Ont., protected to Board's satisfaction.
- 66817 Dec. 14—Apportioning cost of construction and future maintenance of flashing light signals installed at the Huron Line Crossing of The Essex Terminal Railway Co., Windsor, Ont.
- 66818 Dec. 14—Authorizing C.P.R. to install two flashing light signals and one bell at crossing of County Road No. 25, Ont., mileage 105·6 Winchester Subd.
- 66819 Dec. 14—Approving location of pipe lines, etc., of Imperial Oil Limited, near C.P.R. tracks at Whitewood, Sask.
- 66820 To be summarized at a later date.
- 66821 Dec. 14—Authorizing C.N.R. to use and operate bridge over White River at mileage 59·9 Batiscan Subd.
- 66822 Dec. 14—Authorizing C.N.R. to use and operate bridge over Ste. Anne River, Parish of St. Raymond, County of Portneuf, Que.
- 66823 Dec. 14—Declaring C.P.R. crossing of highway known as Churchill's crossing, 1·88 miles east of Elliott Station, Ont., mileage 19·32 Belleville Subd., protected to Board's satisfaction.
- 66824 Dec. 15—Authorizing C.N.R. to install two flashing light signals and one bell at crossing of highway first east of Mallorytown station, Ont., mileage 138·18 Gananoque Subd.
- 66825 Dec. 15—Approving location of pipe lines, etc., of Imperial Oil Limited, near C.N.R. tracks at Amos, Quebec.
- 66826 Dec. 15—Declaring C.N.R. crossing fifth north of Qu'Appelle Junction, Sask., mileage 91·3 Qu'Appelle Subd., protected to Board's satisfaction.
- 66827 Dec. 14—Declaring C.N.R. crossing of Monkland Boulevard in the Town of St. Laurent, Que., protected to Board's satisfaction; present speed limitation of ten miles per hour to be maintained.
- 66828 Dec. 15—Approving under Maritime Freight Rates Act tolls published in Tariffs and supplements filed by C.P.R. under Sec. 9.
- 66829 Dec. 15—Approving under Maritime Freight Rates Act tolls published in Tariffs and supplements filed by the C.P.R. under Sec. 9.
- 66830 Dec. 15—Approving clearances at building located on siding serving Wm. Knechtel & Son Limited, mileage 27·5 Walkerton Subd., Hanover, Ont., (C.P.R.).
- 66831 Dec. 17—Approving under Maritime Freight Rates Act tolls published in tariffs filed by the C.N.R. under Sec. 3.
- 66832 Dec. 17—Approving location of pipe lines, etc., of Imperial Oil Limited, near C.P.R. tracks at Choiceland, Sask.
- 66833 Dec. 17—Dismissing application of Municipal Council of Village of Charny, Que., for an Order directing C.N.R. to render the Curve Crossing on Lemieux Street, East of St. John street in the Village of Charny, a public crossing.
- 66834 Dec. 17—Approving location of pipe lines, etc., of Manitou Lake Co-Operative Association, Limited, near C.P.R. tracks at Neilburg, Sask.
- 66835 Dec. 17—Authorizing C.N.R. to construct highway crossing over their tracks on road allowance north of Sec. 7, Twp. 48, Rge. 25, W.2M, mileage 157·05 Tisdale Subd., Sask.
- 66836 Dec. 17—Declaring C.P.R. crossing of highway mileage 22·2 Nelson Subd., B.C., protected to Board's satisfaction.

- 66837 Dec. 18—Approving location of pipe lines, etc., of McColl-Frontenac Oil Company, Ltd., near C.P.R. tracks at Virden, Man.
- 66838 Dec. 18—Approving location of pipe lines, etc., of Imperial Oil Limited, near C.P.R. tracks at Middle Lake, Sask.
- 66839 Dec. 18—Declaring C.P.R. crossing of highway first east of station at Scotstown, Que., mileage 25·0 Megantic Subd., protected to Board's satisfaction.
- 66840 Dec. 18—Approving location of pipe lines, etc., of North Star Oil Limited, near C.P.R. tracks at Gainsboro, Sask.
- 66841 Dec. 19—Declaring C.P.R. crossing of Main Street in the Village of Shelburne, Ont., protected to Board's satisfaction.
- 66842 Dec. 19—Declaring C.N.R. crossing of highway just west of the west switch at Woodlawn, Ont., mileage 28 Beachburg Subd., protected to Board's satisfaction.
- 66843 Dec. 20—Suspending until further order of the Board cancellation of proportional rates from Detroit, Michigan, on Bananas, Vegetables and Citrus Fruits.
- 66844 Dec. 20—Declaring Midland Railway of Manitoba crossing of Erin Street, in the City of Winnipeg, Man., protected to Board's satisfaction.
- 66845 Dec. 20—Declaring C.N.R. crossing of highway first east of station at Grandview, Man., mileage 29·47 Togo Subd., protected to Board's satisfaction.
- 66846 Dec. 20—Declaring C.P.R. crossing of highway first east of station at Canmore, Alta., mileage 67·0 Laggan Subd., protected to Board's satisfaction.
- 66847 Dec. 21—Dispensing with publication of notice of application of C.P.R. for a recommendation to Governor in Council re agreement between C.P.R. and C.N.R. re joint use of C.P.R. trackage between mileage 93·10 on Red Deer Subd. and mileage 7·57 on its Leduc Subd., Alta.
- 66848 Dec. 21—Recommending to Governor in Council for sanction agreement between the C.P.R. and C.N.R. re joint use of C.P.R. trackage between Red Deer and Leduc Subd., Alta.
- 66849 Dec. 21—Approving location of unloading standard pipe lines, etc., of Edward Oil and Rubber Company near C.P.R. tracks at Warren, Ont.
- 66850 Dec. 21—Approving location of pipe lines, etc., of North Star Oil Limited, near C.P.R. tracks at Carlyle, Sask.
- 66851 Dec. 21—Approving location of pipe lines, etc., of McColl-Frontenac Oil Company Limited, near C.P.R. tracks at Weyburn, Sask.
- 66852 Dec. 22—Authorizing New York Central Railroad Co. to operate over the two connections between the Fort Erie branch of the N.Y.C. Railroad and tracks of the Michigan Central Railroad Co., at Amigari.
- 66853 Dec. 26—Approving under Maritime Freight Rates Act tolls published in Tariffs and Supplements filed by the C.N.R. under Sec. 3.
- 66854 Dec. 26—Declaring C.N.R. crossing of Tupper Street, City of Portage la Prairie, Man., mileage 54·4 Harte Subd., protected to Board's satisfaction; present speed limitation of ten miles an hour to be maintained.
- 66855 Dec. 22—Approving location of pipe lines, etc., of McColl-Frontenac Oil Company Limited, near C.P.R. tracks at Dorval, Que.
- 66856 Dec. 26—Declaring Michigan Central Railroad crossing of highway just east of station at Charing Cross, Ont., mileage NF 171·80 Main Line Subd., protected to Board's satisfaction.
- 66857 Dec. 26—Declaring C.N.R. crossing of Adelaide Street in the Village of Mount Brydges, Ont., protected to Board's satisfaction.
- 66858 Dec. 27—Rescinding Order No. 39001, dated May 10, 1927, authorizing Canadian Northern Western Railway Co. to close and divert north and south road allowance between Secs. 2 and 3, Twp. 39, Rge. 25, W. 4M, near Joffre, Alta.
- 66859 Dec. 28—Rescinding Order No. 52700, dated Jan. 22, 1936, appointing N. Bruce Lyon as Acting Secretary.
- 66860 Dec. 26—Approving Agreed Charge between the C.N.R., C.P.R. and Alberta Hi-Way Refineries Ltd., Imperial Oil Limited, McColl-Frontenac Oil Company, Limited, and North Star Oil Limited, on petroleum products as specified therein, from Calgary, Alta., to points in the provinces of Alta. and Sask.
- 66861 Dec. 28—Appointing H. E. B. Coyne, as Acting Secretary in the absence of the Secretary through illness or any other cause.
- 66862 Dec. 28—Approving location of pipe lines, etc., of North Star Oil Limited, near C.N.R. tracks at Cudworth, Sask.
- 66863 Dec. 28—Approving location of pipe lines, etc., of Imperial Oil Limited, near C.N.R. tracks at Marcelin, Sask.

- 66864 Dec. 28—Approving location of pipe lines, etc., of North Star Oil Limited near C.N.R. tracks at Weyburn, Sask.
- 66865 Dec. 28—Approving location of pipe lines, etc., of North Star Oil Limited, near C.P.R. tracks at Pleasantdale, Sask.
- 66866 Dec. 28—Declaring C.N.R. crossing of highway first north of station at Cantic, Que., mileage 42.04 Rouses Point Subd., protected to Board's satisfaction.
- 66867 Dec. 28—Declaring C.N.R. crossing of Provincial Highway No. 99, Ont., mileage 15.80 Dundas Subd., protected to Board's satisfaction.
- 66868 Dec. 28—Declaring C.N.R. crossing of Gage Avenue, Hamilton, Ont., protected to Board's satisfaction.
- 66869 Dec. 28—Approving location of pipe lines, etc., of North Star Oil Limited, near C.N.R. tracks at Moose Range, Sask.
- 66870 Dec. 29—Extending time within which C.P.R. was required to construct extension to branch line of railway to serve Canadian Forest Products Limited, at Marpole, B.C.
- 66871 Dec. 29—Approving location of pipe lines, etc., of St. Cyr-Perron Registered, near C.P.R. tracks at Ville Marie, Que.
- 66872 Dec. 28—Declaring C.P.R. crossing of Eighth Avenue, in the City of Kamloops, B.C., mileage 128.41 Shuswap Subd., protected to Board's satisfaction; present speed limitation of ten miles per hour to be maintained.

The Board of

Transport Commissioners for Canada

Judgments, Orders, Regulations and Rulings

Vol. XXXV

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No. 21

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Application of Canadian Pacific Railway Company under Sections 181, 182, 193 and 252 of the Railway Act for authority to construct, maintain and operate a branch line of railway to serve The White Motor Company of Canada Limited in the Town of Mount Royal, Province of Quebec; commencing at a point in Lot 580 of the Cadastral Parish of St. Laurent, Town of Mount Royal, County of Jacques Cartier, on the Applicant Company's Mount Royal spur, and as more particularly described in the said application on file with the Board, dated July 19, 1945.

File No. 23202.3

The Hon. PHILIPPE BRAIS, K.C., Mr. R. C. HOLDEN, K.C., and Mr. K. D. M. SPENCE appeared for the Canadian Pacific Railway Company, the Applicants,

and

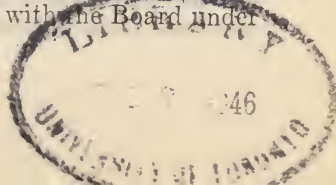
Mr. HUGH O'DONNELL, K.C., and Mr. A. K. DYSART for Canadian National Railway Company, the Respondent.

Heard at Montreal, Que., on November 14 and 15, 1945.

JUDGMENT

CROSS, *Chief Commissioner*:

By its application, as subsequently amended, dated July 19, 1945, and filed with the Board on July 20, 1945, Canadian Pacific Railway Company, hereinafter called the Applicant Company applied to the Board under Sections 181, 182, 193 and 252 of the Railway Act for authority to construct, maintain and operate a branch line of railway to serve The White Motor Company of Canada Limited in the Town of Mount Royal, Province of Quebec, commencing at a point in Lot 580 of the Cadastral Parish of St. Laurent, Town of Mount Royal, County of Jacques Cartier, on the Applicant Company's Mount Royal spur, and extending therefrom in a northerly and northeasterly direction to and into the lands of The White Motor Company of Canada Limited in Lot 581 in said Cadastral Parish, in all a distance of 945 feet, as shown in red on the plan and profile and described in the book of reference combined No. 912, dated Montreal, July 4, 1945, deposited in the Registry Office for the Registration Division of Montreal on July 19, 1945, as No. 870, a copy of which plan is on file with the Board under File No. 23202.3.



The Applicant Company also requests that publication of notice of the application be dispensed with.

The said Mount Royal spur was constructed by the Applicant Company under the authority of Board's Order No. 65967, dated May 2, 1945, issued pursuant to a judgment of the Board in Canadian Pacific Railway Company v. Canadian National Railways, 58 C.R.C. 101.

The said plan and profile and book of reference combined, No. 912, dated Montreal, July 4, 1945, is signed by the said The White Motor Company of Canada Limited.

In support of and with the application the Applicant Company filed with the Board as exhibits two letters from The White Motor Company of Canada Limited addressed to an officer of the Applicant Company, dated April 6 and July 18, 1945. By these letters The White Motor Company of Canada Limited indicate that they are desirous of having Canadian Pacific Railway siding facilities at their proposed Decarie Boulevard plant; that Canadian Pacific Railway Company "can serve our Canadian distribution set-up to better advantage than any other railway," and requested the Applicant Company to progress the matter with the Board of Transport Commissioners for Canada.

A copy of the application and accompanying material was served by the Applicant Company on Palmers Limited and Marien Wilson Limited, a portion of whose lands are shown by said Plan No. 912, dated July 4, 1945, as crossed by the said proposed branch line of railway. The Canadian National Railway Company, hereinafter sometimes called the Railway Company, was also served with a copy of the said application and material. The Railway Company filed and delivered an answer opposing the application.

No answer to the said application was filed with the Board by said Palmers Limited or Marien Wilson Limited.

The Applicant Company is now the owner of that portion of the said lands shown by said Plan No. 912, dated July 4, 1945, as land of Palmers Limited crossed by said proposed branch line of railway.

The said The White Motor Company of Canada Limited have under construction on their lands in said Block 581 of the Cadastral Parish of St. Laurent, in the Town of Mount Royal, a large factory and office building for the purpose of the manufacture of buses, trolley buses and heavy duty trucks. This building will have approximately 167,000 square feet of plant space. The rail traffic which The White Motor Company of Canada Limited will have for shipment when their works are completed and in production is estimated at about three carloads on each of the 365 days of the year, going out, and one to one and one-half carloads per day, coming in. This makes an estimate of at least 1,460 carloads of traffic per year. This is about what The White Motor Company's manufacturing contract calls for in the next year or year and one-half. Later they contemplate a substantial enlargement of the size of their plant, and increase in production of the products to be manufactured. This would result in an increase of the carload traffic available for carriage.

The White Motor Company have also intimated to Canadian National Railway Company that it is their intention to have the facilities of both the Canadian National and Canadian Pacific Railways.

The Applicant Company is now, and has been for some time, the owner of the undermentioned lands under a Deed of Sale, dated October 31, 1944, made by Miss Aline Hodge to the Applicant Company, and registered at Montreal Registry Office, on the 2nd November, 1944, under the number 596796, namely:

(1) That tract of land situate in the Town of Mount Royal and forming part of Cadastral number 580 as shown and described on the Official Plan and in the Book of Reference for the Parish of St. Laurent, County of Jacques Cartier, Province of Quebec, the limits of the said tract or parcel of land being more particularly described as follows, viz:

A part of said lot Cadastral number 580 being a strip 100 feet wide by a length of 1,517 feet on its northeastern side line and 1,516·8 feet on its southwestern side line, containing an area of 4·12 arpents, more or less, and bounded to the northeast partly by part of lot Cadastral number 95 of the Incorporated Village of Cote des Neiges and partly by lot Cadastral number 581 of said Parish of St. Laurent, to the southwest by another part of said lot Cadastral number 580 belonging to the Vendor, to the northwest by that part of said lot Cadastral number 580 taken for the widening of Cote de Liesse Road and to the southeast by that other portion of said lot Cadastral number 580 secondly described in the said Deed of Sale. All dimensions are in English measure.

The said land is, however, subject to such rights (if any) as the Railway Company may have acquired by expropriation, across said strip of land for the purposes of a right of way for their spur track from Paisley Siding, Mount Royal, Quebec, to the plant of Canada Dry Ginger Ale, Limited.

The said lands described in paragraph (1) above adjoin the lands of the said The White Motor Company of Canada Limited.

The Applicant Company is now, and has been for some time, the owner of the undermentioned land under a Deed of Sale, dated May 29, 1945, made by Miss Aline Hodge to the Applicant Company, and registered at Montreal Registry Office, on May 31, 1945, under the number 616417, namely:

(2) A tract or parcel of land of irregular figure situate in the Town of Mount-Royal, forming part of lot Cadastral number Five Hundred and Eighty (580) as shown and described on the Official Plan and in the Book of Reference for the Parish of St. Laurent, County of Jacques Cartier, Province of Quebec, containing an area of six arpents and seventy-one hundredths of an arpent (6·71 Arps) more or less, and shown edged in red on the plan attached, signed by J. H. Forbes and dated 18th May, 1945, the limits of said tract or parcel of land being more particularly described as follows, viz:

Commencing at the point of intersection of the division line between said lot Cadastral number Five Hundred and Eighty (580) and lot Cadastral number Five Hundred and Seventy-nine (579) of said Parish with the northwestern limit of that part of said lot Cadastral number Five Hundred and Eighty (580) as acquired by said Railway Company by deed dated 31st October, 1944, and registered under number 596796, said point being at a distance of fifteen hundred and sixteen (1516) feet measured southeasterly along said division line from the southeastern side of Cote de Liesse Road as widened: thence northeasterly along said northwestern limit of the lands of said Railway Company, a distance of four hundred and eighty-four (484) feet, more or less, to a point at a square distance of one hundred (100) feet measured southwesterly from the northeast limit of said lot Cadastral number 580; thence northwesterly along the southwestern limit of the lands of said Railway Company, parallel to and at a square distance of one hundred (100) feet, measured southwesterly from said northeast limit of said lot number 580 a distance of nine hundred and sixty-five (965) feet more or less; to a point on the southeastern boundary of the right of way of the Canadian National Railway Company's spur leading to the Canada Dry Ginger Ale Company's property, thence following said boundary of right of way in a general southerly direction to its point of intersection with said division line between said lots Cadastral numbers 580 and 579; thence southeasterly along said division line, a distance of two hundred and twenty-two (222) feet, more or less, to the point of commencement, bounded to the northwest by the right of way of said Canadian National Company's Spur, being another part of said lot Cadastral number 580, to the southwest partly by said right of way and partly by said lot Cadastral number 579 of said Parish, and to the southeast and northeast by another part of said lot Cadastral number 580 belonging to said Canadian Pacific Railway Company.

All dimensions are in English measure.

Each of the said two parcels of land of the Applicant Company are now subject to such rights and interests (if any) as the Railway Company may have acquired therein for the purpose of a right of way, under the expropriation proceedings hereinafter referred to.

By Order in Council P.C. 4968, dated 17th July, 1945, (Exhibit 14) issued pursuant to the terms of Section 21 of Chapter 172 of the Revised Statutes of Canada, "An Act to incorporate the Canadian National Railway Company and respecting Canadian National Railways", approval was given the Canadian National Railway Company for construction of a supplementary spur as shown on Plan No. T. 956 attached to the Order in Council, leading from the spur track as authorized by P.C. 7875, of October 10, 1944, and being a spur track from Paisley Siding, Mount Royal, Quebec, to the plant of the Canada Dry Ginger Ale, Limited, to serve industrial properties on Decarie Boulevard.

Subsequent to the issue of said Order in Council P.C. 4968, dated 17th July, 1945, and for the purpose of obtaining land for a right of way on which to construct the said supplementary spur specified in the said Order in Council, the Railway Company proceeded to expropriate certain lands under the provisions of the Expropriation Act (R.S. Canada 1927, Chapter 64) as made applicable to that Company by Canadian National Railway Act (R.S. Canada, 1927, Chapter 172) as amended by Chapter 10 of the Statutes of Canada, 1929. The Expropriation Plan in respect to such right of way is dated Montreal, July 4, 1945, and was registered in the Registry Office, Division of Montreal, on the 18th day of July, 1945, as No. 869, (Exhibit 15). The lands thus expropriated or which the Railway Company purported to expropriate for the said right of way are outlined in red on the said Expropriation Plan and comprise part of Lots Nos. 579, 580 and 581, Parish of St. Laurent, County of Jacques Cartier, Province of Quebec. The said proposed right of way of the Railway Company as shown on said Expropriation Plan crosses the lands of the Applicant Company described in paragraphs numbered (1) and (2) above, and terminates at the south boundary of the lands of said The White Motor Company of Canada Limited.

The said proposed right of way of the Railway Company overlaps a portion of the lands on which the Applicant Company applies for leave to construct its branch line to serve The White Motor Company of Canada Limited.

The length of the said proposed supplementary spur which the Railway Company proposed to construct is 1,290 feet, and was intended in part, at least, to serve said The White Motor Company of Canada Limited.

On the morning of July 22, 1945, the Railway Company commenced the construction of and laid certain tracks for its said proposed supplementary spur, as shown on Plan No. T-956, dated Montreal, June 15, 1945, (Exhibit 14), upon their proposed right of way as shown on the said Expropriation Plan (Exhibit 15).

On the 22nd day of July, 1945, in certain proceedings in the Superior Court, District of Montreal, wherein Canadian Pacific Railway Company is Petitioner, and Canadian National Railway Company, Respondent, an Order was issued and served ordering and enjoining the said Canadian National Railway Company, its officers, representatives, contractors and servants to cease to enter upon and/or carry on any work or operation of any nature whatsoever on the part of Lot 580 in the Parish of St. Laurent in the Town of Mount Royal which lies to the south of the spur line of Canadian National Railway Company leading to Canada Dry Ginger Ale Plant until the 23rd day of July, 1945, at twelve o'clock noon and until Judgment has been rendered upon the Petition for an Interlocutory Injunction made by the Canadian Pacific Railway Company. (Exhibit 1).

In addition to the said petition for an Interlocutory Injunction, the Applicant Company has taken, in said Superior Court, a possessory action asking that its rights to the lands which Canadian National Railway Company has expropriated or purported to expropriate for a right of way for the supplementary spur be recognized, and that the expropriation proceedings of Canadian National Railway Company be declared null and void. And the Canadian National Railway Company in turn has applied to the said Court for a writ of possession of the said lands. The said petition for an Interlocutory Injunction and other issues raised between the parties have been heard by a Judge of the said Superior Court, but Judgment thereon has not been rendered. In the meantime the said Injunction Order has been continued in effect.

The objections of the Railway Company to this application do not go as far as to deny entirely the Applicant Company from furnishing rail service to The White Motor Company of Canada Limited. What they appear to be more directly concerned with is that they too be permitted to furnish such service. On instructions from appropriate authority, the engineer of the Railway Company who prepared the plan of the proposed supplementary spur (Exhibit 14) did so in such a way as not to prevent the Applicant Company from joining up with the said proposed supplementary spur, to take care of the Applicant Company's requirements into the White Motors plant.

It may, perhaps, be mentioned that Canadian National Railway Company, on November 12, 1945, also filed with the Board an application under Sections 181, 182, 193, 252 and all other relevant sections of the Railway Act for authority:—

"(1) To construct, maintain and operate a branch line of railway to serve The White Motor Company of Canada, Limited, in the Town of Mount Royal, Province of Quebec, commencing at a point in Lot 579 of the Cadastral Parish of St. Laurent, Town of Mount Royal, County of Jacques Cartier, on the Applicant Company's Canada Dry Ginger Ale Spur, and extending therefrom in a northeasterly and northerly direction to a point on the southern boundary of the lands of The White Motor Company of Canada Limited, in all a distance of 1,290 feet, as is more particularly shown outlined in red on the plan, profile and book of reference combined No. T-956-D dated November 10, 1945, deposited in the Registry Office for the Registry Division of Montreal on November 10, 1945, as No. 876, three linen and three paper prints of which are submitted herewith;

(2) To take possession of, use or occupy any lands required for the construction, maintenance or operation of the said branch line which may now or hereafter be held to belong to any other Railway Company;

(3) To use and enjoy and to have and exercise full right and power to operate its trains over and upon any portion or portions of the right of way and tracks of any other Railway Company which may at the date of construction of the said branch line be situate in whole or in part upon the aforesaid lands;

(4) To cross or join, if necessary, its tracks with those of such other Company in a manner effectively to permit of the full and complete operation of the said branch line,"

and requests that publication of notice of the application be dispensed with.

The location of the proposed branch line of railway which the Railway Company asks authority of the Board to construct, maintain and operate is the same as the location of the said proposed supplementary spur as shown on Exhibit 14 hereinbefore referred to. The said last mentioned application of the Railway Company has not been heard or otherwise disposed of.

It is the intention of The White Motor Company of Canada Limited to lay their own railway tracks within their own property, and that such tracks be connected up with the tracks of the proposed branch line of the Applicant Company, at a point on the southern boundary of the property of said The White Motor Company of Canada Limited.

It would not seem expedient, nor do I think it necessary for a disposition of this application, that the Board deal with any of the matters in issue between the parties in the Superior Court, of the Province of Quebec.

Railway trackage with direct connection to and from their manufacturing plant is most essential to the business of The White Motor Company of Canada Limited. The injunction against the Railway Company issued in the Superior Court proceedings is still in effect.

Upon consideration of all that has been placed before us and upon the facts and circumstances present here, I am amply satisfied that the proposed branch line of the Applicant Company, except as to that part which enters into or upon the lands of The White Motor Company of Canada Limited, is necessary in the public interest and for the purpose of giving increased facilities to the business of the said The White Motor Company of Canada Limited. It would seem most unreasonable to deprive this industry of such essential facilities until such time as the matters in issue between the two railway companies, in the Superior Court, have been finally determined.

The Applicant Company has also asked that publication of notice of the application be dispensed with. This the Board may do under Section 181, clause (b) of The Railway Act. To do so here would not, I think, prove prejudicial to anyone.

I would grant the application of the Applicant Company except as to that portion of the proposed branch line which enters into and upon the lands of The White Motor Company of Canada Limited. This will be sufficient to enable the appropriate connection to be made. Any necessary amendments to the plan of the said proposed branch line should be made accordingly.

As previously mentioned the proposed right of way of the Railway Company for its supplementary spur overlaps a portion of the Applicant Company's proposed right of way for its branch line. The land so overlapped is part of the land, the right to or ownership of which forms part of the dispute between the parties in the Superior Court.

The situation in this respect, I think, may be appropriately dealt with under the provisions of Section 193, subsection 1, of The Railway Act, which reads as follows:

"The company may take possession of, or occupy any lands belonging to any other railway company, use and enjoy the whole or any portion of the right of way, tracks, terminals, stations or station grounds of any other railway company, and have and exercise full right and power to run and operate its trains over and upon any portion or portions of the railway of any other railway company, subject always to the approval of the Board first obtained and to any order and direction which the Board may make in regard to the exercise, enjoyment or restriction of such powers or privileges."

I would, accordingly, authorize the Applicant Company to take possession of, use and occupy any lands belonging to the Canadian National Railway Company which are required for the construction, maintenance and operation of the said proposed branch line of the Applicant Company.

Order to issue accordingly.

Dated at Ottawa, January 11, 1946.

J. A. CROSS.

I concur HUGH WARDROPE

J. A. STONEMAN.

ORDER No. 66903

In the matter of the application of the Canadian Pacific Railway Co., hereinafter called the "Applicant Company," under Sections 181, 182, 193 and 252 of the Railway Act, for authority to construct, maintain and operate a branch line of railway to serve The White Motor Company of Canada Limited, in the Town of Mount Royal, Province of Quebec, commencing at a point in Lot 580 of the Cadastral Parish of St. Laurent, Town of Mount Royal, County of Jacques Cartier, on the Applicant Company's Mount Royal spur and extending therefrom in a northerly and north-easterly direction to and into the lands of the White Motor Company of Canada Limited in Lot 581 in said Cadastral Parish, in all a distance of 945 feet, as shown in red on the plan and profile and described in the book of reference combined No. 912, dated Montreal, July 4, 1945—deposited in the Registry Office for the Registration Division of Montreal on July 19, 1945, as No. 870—on file with the Board under file No. 23202-3:

SATURDAY, the 12th day of January, A.D. 1946.

J. A. CROSS, K.C., *Chief Commissioner.*

HUGH WARDROPE, *Asst Chief Commissioner.*

J. A. STONEMAN, *Commissioner.*

Upon hearing the application at the sittings of the Board held at Montreal on November 14 and 15, 1945, in the presence of Counsel for the Applicant Company and the Canadian National Railways, and what was alleged; and upon reading the submissions filed on behalf of The White Motor Company of Canada Limited, publication of notice of the application being hereby dispensed with—

It is ordered:

1. That the Applicant Company be, and it is hereby, authorized to construct, maintain and operate a branch line of railway to serve The White Motor Company of Canada Limited in the Town of Mount Royal, Province of Quebec, commencing at a point in Lot 580 of the Cadastral Parish of St. Laurent, Town of Mount Royal, County of Jacques Cartier, on the Applicant Company's Mount Royal Spur, and extending therefrom in a northerly and north-easterly direction to Station 5 ÷ 85, as shown in red on the said plan and profile and described in the book of reference combined on file with the Board under file No. 23202-3.

2. That the taking possession, use and occupation by the Applicant Company of any lands belonging to the Canadian National Railway Company which are required for the construction, maintenance and operation of branch line of railway hereby authorized be, and are hereby approved and authorized.

3. That the branch line of railway hereby authorized be constructed and completed within six months from the date of this Order.

J. A. CROSS,
Chief Commissioner.

GENERAL ORDER No. 679

In the matter of paragraph 22, Additional Type, Specification 4B, in Supplement No. 2 of the Board's Regulations for the Transportation of Explosives and other Dangerous Articles by Freight:

File No. 1717.88.22

MONDAY, the 31st day of December, A.D., 1945.

J. A. CROSS, K.C., *Chief Commissioner.*

HUGH WARDROPE, *Asst. Chief Commissioner.*

A. SYLVESTRE, K.C., *Deputy Chief Commissioner.*

G. A. STONE, *Commissioner.*

Upon the recommendation of the Director of Operation of the Board—

It is ordered: That paragraph 22, Additional Type, Specification 4B, in Supplement No. 2 of the Board's Regulations for the Transportation of Explosives and other Dangerous Articles by Freight, be, and it is hereby, suspended until further Order of the Board.

J. A. CROSS,

Chief Commissioner.

SUMMARY OF ORDERS ISSUED BY THE BOARD

- 66873 Jan. 2—Declaring C.N.R. crossing of highway first east of station at St. Eloi, Province of Que., protected to Board's satisfaction.
- 66874 Jan. 2—Declaring C.N.R. crossing of highway second west of station at Petiteodiac, N.B., protected to Board's satisfaction.
- 66875 Jan. 2—Declaring C.P.R. crossing of highway first east of station at Hughenden, Alta., mileage 111.7 Hardisty Subd., protected to Board's satisfaction.
- 66876 Jan. 3—Approving under Maritime Freight Rates Act tolls published in Item 247 of Supplement No. 11 to Tariff C.T.C. No. 1166 filed by Dominion Atlantic Railway Co. under Sec. 9.
- 66877 Jan. 3—Approving plan No. G-482 revised to Sept. 10, 1945, showing protection required to be installed at crossing of Talbot St. in the Town of Essex, Ont. (N.Y.C.R.).
- 66878 Jan. 3—Approving location and details of portable shelter to be erected by C.N.R. at Larochelle, Que., mileage 81.9 Sorel Subd.
- 66879 Jan. 3—Approving Supplement No. 4, to agreement between the Bell Telephone Co. of Canada and the Commissioners for the Telephone System of the Municipality of the Township of North Easthope.
- 66880 Jan. 4—Approving location of pipe lines, etc., of The British American Oil Company Limited near C.P.R. tracks at Beausejour, Man.
- 66881 Jan. 5—Declaring C.N.R. crossing of highway first west of station at Newcastle, N.B., protected to Board's satisfaction.
- 66882 Jan. 4—Declaring C.N.R. crossing of highway first west of station at Haynes, Alta., mileage 10.37 Brazeau Subd., protected to Board's satisfaction.
- 66883 Jan. 5—Declaring C.P.R. crossing of highway first east of station at Basswood, Man., mileage 9.5 Bredenburg Subd., protected to Board's satisfaction.
- 66884 Jan. 5—Declaring C.N.R. crossing of Hurontario Street in the Village of Port Credit, Ont., protected to Board's satisfaction.
- 66885 Jan. 4—Approving location of pipe lines, etc., of North Star Oil Limited near C.P.R. tracks at Baldwinton, Saskatchewan.
- 66886 Jan. 4—Approving location of pipe lines, etc., of Imperial Oil Limited near C.P.R. tracks at Woodrow, Sask.
- 66887 Jan. 4—Approving location of pipe lines, etc., of McColl-Frontenac Oil Company Limited near C.P.R. tracks at Indian Head, Sask.
- 66888 Jan. 5—Declaring C.P.R. crossing of Old Dawson Road first east of station at Kaministiquia, Ont., mileage 23.33 Kaministiquia Subd., protected to Board's satisfaction.
- 66889 Jan. 7—Authorizing C.N.R. to construct siding across Burlington St. and The Hamilton Street Railway, in the City of Hamilton, Ont.
- 66890 Jan. 5—Amending Order No. 66763, dated Dec. 4, 1945, approving clearances at C.N.R.'s siding serving Zephyr Looms & Textiles Ltd. at Ormstown, Que.
- 66891 Jan. 5—Declaring C.N.R. crossing of intersection of 103rd Avenue and lane 104½, Edmonton, Alta., Edmonton Terminals, protected to Board's satisfaction; present speed limitation of ten miles per hour to be maintained, all movements over crossing to be flagged.
- 66892 Jan. 8—Authorizing Pere Marquette Railway Co. to operate its trains on the St. Thomas-Walkerville main line through interlocking plant at crossing of its tracks at Blenheim, Ont.
- 66893 Jan. 14—Authorizing the Bell Telephone Company of Canada to appeal to the Supreme Court of Canada from Order of the Board number 66533, dated Oct. 4, 1945.
- 66894 Jan. 7—Approving location of pipe lines, etc., of The British American Oil Company, Limited near C.N.R. at Canora, Sask.
- 66895 Jan. 7—Approving location of pipe lines, etc., of Imperial Oil Limited near C.P.R. at Storhocks, Sask.
- 66896 Jan. 8—Approving under Maritime Freight Rates Act tolls published in tariffs filed by C.N.R. under Sec. 3.

- 66897 Jan. 9—Declaring C.P.R. crossing of Strachan Ave., Toronto, Ont., protected to Board's satisfaction.
- 66898 Jan. 10—Declaring C.P.R. crossing of highway, 2·10 miles North of Ostrander, Ont., mileage 10·19 Port Burwell Subd., protected to Board's satisfaction.
- 66899 Jan. 9—Declaring C.N.R. crossing of Egerton Street, London, Ont., Racecourse Yard, Dundas Subd., protected to Board's satisfaction; present speed limitation of ten miles per hour to be maintained, all switching movements to be flagged over crossing.
- 66900 Jan. 10—Declaring C.N.R. crossing of highway first West of Tillsonburg Junction, Ont., mileage 96·20 Cayuga Subd., protected to Board's satisfaction.
- 66901 Jan. 9—Authorizing Village of Hafford, Sask., to construct public highway crossing over C.N.R. just East of line between the SW and SE Quarters of Sec. 26, Twp. 43, Rge. 10, W 3M, Sask.
- 66902 Jan. 10—Declaring C.P.R. crossing of highway at mileage 81·26 La Riviere Sub-division, Man. protected to Board's satisfaction.
- 66903 Jan. 12—Authorizing C.P.R. to construct branch line of railway to serve The White Motor Company of Canada Limited in the Town of Mount Royal, Que.
- 66904 Jan. 11—Declaring Montreal & Southern Counties Railway crossing of Boulevard Alexandre Taschereau, Greenfield Park, Que., mileage 5 Interurban Subd., protected to Board's satisfaction; present speed limitation of ten miles per hour to be maintained.
- 66905 Jan. 11—Approving clearance at entrance to the power house of the West Kootenay Power and Light Company, Limited, in Sub-lot 28 of Lot 4598, G 1, at Brilliant, B.C. (C.P.R.).
- 66906 Jan. 10—Declaring C.N.R. crossing of Highway No. 14 in the Village of LaPrairie, Que., mileage 13·08 Massena Subd., protected to Board's satisfaction.
- 66907 Jan. 14—Approving under Maritime Freight Rates Act tolls published in tariffs and supplements, filed by the C.N.R. under Sec. 3.
- 66908 Jan. 14—Declaring Northern Alberta Railways crossing of highway first west of Grimshaw Station, Alta., mileage 65·4 Peace River Subd., protected to Board's satisfaction.
- 66909 Jan. 15—Approving location of pipe lines, etc., of Imperial Oil Limited near C.N.R. tracks at Beechy, Sask.
- 66910 Jan. 15—Approving By-law No. 15922 of the City of Winnipeg, prohibiting the sounding of engine whistles and ringing of engine bells at level crossings within the limits of the City of Winnipeg.
- 66911 Jan. 15—Directing Dominion Atlantic Railway to install two flashing light signals and one bell at highway crossing west of station at Hebron, N.S., mileage 82·41 Yarmouth Subd.

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The Board of Transport Commissioners for Canada

Judgments, Orders, Regulations and Rulings

Vol. XXXV

Ottawa, February 15, 1946

No. 22

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In the matter of the Application of the County of Soulanges, in the Province of Quebec, under Section 51 of the Railway Act, for reconsideration of Board's Orders No. 24882, dated April 8, 1916, No. 26734, dated November 12, 1917 and No. 27111 dated April 5, 1918; and for an Order rescinding, changing, altering or varying said Order No. 27111, which Order places the cost of the watchman of Vernier Crossing at Coteau Station upon the Grand Trunk Railway Company (now Canadian National Railways), the Corporation of the Village of Coteau Station and the Applicant County; and re-establishing Order No. 26734, dated November 12, 1917, whereby no cost is placed upon the Applicant County.

File No. 9437.1302.

Mr. Godefroy Laurendeau appeared for the County of Soulanges.

Mr. A. K. Dysart appeared for the Canadian National Railways.

Mr. Hector Asselin and Mr. Emmanuel Dumesnil, Councillors, represented the Village of Coteau Station.

Heard at the City of Montreal on Tuesday, November 13, 1945.

JUDGMENT

STONEMAN, *Commissioner*;

The application relates to certain orders made by the Board in regard to a highway crossing of the Canadian National Railways at Coteau Station, known as the Vernier Crossing.

Some account of these orders must now be given. On April 8th, 1916, upon the application of the County of Soulanges (hereinafter referred to as "the County"), the Board made Order No. 24882 directing the railway to place a day watchman at the crossing, and providing that seventy-five per cent of his wages should be paid by the railway and twenty-five per cent by the County.

Upon a further application by the County, and after a hearing at Montreal, the Board made Order No. 26734, dated November 12th, 1917, which amended the previous order by substituting the name of the Village of Coteau Station (hereinafter referred to as "the village") for that of the County, and thereby relieved the County of all costs in respect of the crossing.

The Village then made an application for a reconsideration of the division of costs. The application was heard at Ottawa on April 2nd, 1918. The result was the issuing of Order No. 27111, dated April 5th, 1918, whereby the previous orders were amended so as to require the Village to pay ten per cent of the watchman's wages and the County to pay fifteen per cent.

Subsequently, by Order No. 52224, dated September 3rd, 1935, the hours of duty of the watchman were extended, and the division of costs prescribed by Order No. 27111 was reaffirmed.

The present application by the County is (to put it shortly) to relieve the County from paying any part of the cost of protection at the crossing. It is the County's contention that the County has no jurisdiction over the highway at the Vernier Crossing and is, therefore, not "interested or affected" within the meaning of Section 39 of the Railway Act, and therefore the Board has no power to impose upon the County any part of the cost of protection at the crossing. On these points Mr. Laurendeau has presented a very well prepared and able argument.

But before the Board can consider Mr. Laurendeau's argument, a preliminary question must be dealt with, and unless it is decided in the County's favor, the County is out of court. The question is this:—Is it reasonable and proper, in the circumstances of this case, for the Board to grant a review of its previous decisions?

Order No. 27111, which prescribed the present division of cost, was made on April 5th, 1918. Immediately after that order was issued it was open to the County to ask for a review and rescission of the order, or, in the alternative, to ask for leave to appeal against it to the Supreme Court of Canada. The County did not take either of those courses at that time. It has waited for twenty-seven years before making its application.

Rule 19 of the Board's Rules and Regulations is as follows:—

"Any application to the Board to review, rescind, or vary any decision or order made by it shall be made within thirty days after the said decision or order shall have been communicated to the parties, unless the Board think fit to enlarge the time for making such application, or otherwise orders."

The Board's practice is to grant a reasonable extension of time for making an application under Rule 19 where such an extension appears to be warranted. And even where a long period has elapsed since the making of the decision or order, the Board has in some cases considered it proper to grant a review where there has been a material change of circumstances.

But in the present case there has been no change of circumstances. No fact or argument has now been presented which could not have been presented at the hearing on April 2nd, 1918. I think, therefore, that in this case it would be going beyond the bounds of what is reasonable and proper to grant a review of a decision which has been in effect for such a long period of time.

I would dismiss the application.

Ottawa, January 18th, 1946.

J. A. STONEMAN

I concur

J. A. CROSS,
HUGH WARDROPE

(Traduction)

Requête de la corporation du comté de Soulanges, province de Québec, demandant en vertu de l'article 51 de la Loi des chemins de fer, la reconsidération des ordonnances de la Commission nos 24882, 26734 et 27111, datées, respectivement du 8 avril 1916, du 12 novembre 1917 et du 5 avril 1918; demandant une ordonnance révoquant ou modifiant ladite ordonnance n° 27111, laquelle décrète que les frais de services des gardiens au passage Vernier, à la Station-du-Coteau, soient à la charge de la compagnie de chemin de fer Grand-Tronc (maintenant le Canadien-National), de la corporation du village de la Station-du-Coteau et de la requérante, et demandant aussi la remise en vigueur de l'ordonnance n° 26734, en date du 12 novembre 1917, laquelle n'imposait pas de frais à la requérante.

Dossier n° 9437.1302

Me Godefroy Laurendeau comparut pour la corporation du comté de Soulanges.

Me. A. K. Dysart comparut pour le Canadien-National.

Messieurs Hector Asselin et Emmanuel Dumesnil, conseillers, représentèrent le village de la Station-du-Coteau.

Entendue à Montréal, mardi le 13 novembre 1945.

JUGEMENT

STONEMAN, Commissaire:

La requête a trait à certaines ordonnances de la Commission concernant un passage de voie publique traversant la voie du Canadien-National à la Station-du-Coteau, connu sous le nom de passage Vernier.

Il y a lieu de faire un exposé de ces ordonnances. Le 8 avril 1916, à la suite d'une requête de la part de la corporation du comté de Soulanges, (ci-après appelé le comté) la Commission émit l'ordonnance n° 24882 enjoignant au chemin de fer de placer un gardien de jour audit passage, et décrétant que soixante-quinze pour cent (75%) du salaire dudit gardien soit payé par la compagnie de chemin de fer, et vingt-cinq pour cent (25%) par le comté.

À la suite d'une nouvelle requête soumise par le comté, entendue à Montréal, la Commission émit l'ordonnance n° 26734, en date du 12 novembre 1917, amendant l'ordonnance précédente en substituant le nom du village de la Station-du-Coteau (ci-après appelé le village) à celui du comté, dégageant de ce fait le comté de tous frais relatifs au passage.

Le village produisit ensuite une requête demandant la reconsidération de la question de la répartition des frais. Cette requête fut entendue à Ottawa le 2 avril 1918, et le 5 avril 1918, l'ordonnance n° 27111 fut émise amendant les ordonnances précédentes et enjoignant au village de payer dix pour cent (10%) et au comté, quinze pour cent (15%) du salaire du gardien.

Subséquentement, en vertu de l'ordonnance n° 52224, datée du 3 septembre 1935, les heures de services du gardien furent prolongées, et la répartition des frais prescrite par l'ordonnance n° 27111 fut réaffirmée.

La présente requête du comté est, en résumé, une demande pour être libéré de toute contribution aux frais de protection de ce passage. Le comté prétend qu'il n'a aucune juridiction sur la route à l'endroit du passage Vernier et qu'il n'est pas, en conséquence, intéressé ou affecté d'après les termes de l'article 39 de la Loi des chemins de fer, et que la Commission, par conséquent, n'a pas le pouvoir d'imposer au comté aucune partie des frais de protection à ce passage. Sur ces questions Me Laurendeau a soumis un argument fort bien préparé.

Avant que la Commission ne puisse considérer l'argument de Me Laurendeau l'on doit d'abord traiter d'une question préliminaire, et à moins qu'elle ne soit décidée en faveur du comté, celui-ci est hors de cause. La question est celle-ci: Est-il raisonnable et à propos, dans les circonstances de la présente cause, que la Commission accorde une demande de revision de ses décisions antérieures.

L'ordonnance n° 27111, qui prescrit la présente répartition des frais, fut émise le 5 avril 1918. Immédiatement après l'émission de cette ordonnance, il appartenait au comté de demander une revision et une révocation de l'ordonnance, ou de demander la permission d'interjeter appel à l'encontre de ladite ordonnance à la Cour Suprême du Canada. Le comté n'eut recours à aucune de ces procédures dans le temps; il a attendu vingt-sept ans avant de produire sa requête.

Le paragraphe 19 des règles de pratique de la Commission se lit comme suit:—

Toute demande adressée à la Commission dans le but de reviser, annuler ou changer une ordonnance par elle rendue, doit être présentée dans les trente jours de la date où telle ordonnance a été communiquée aux parties, à moins que la Commission ne juge à propos de prolonger le délai pour la présentation de telle demande, ou n'en ordonne autrement."

La pratique de la Commission est d'accorder un délai raisonnable pour la production d'une requête en vertu de la règle n° 19, lorsqu'il appert qu'un tel délai est justifiable. Dans certains cas, même à la suite d'un long délai après la reddition d'une décision ou l'émission d'une ordonnance, la Commission a considéré à propos d'accorder une demande de revision, lorsqu'il y avait un changement important des circonstances.

Dans la présente cause, toutefois, il n'y a pas eu de changement des circonstances. Aucun fait ou argument n'a été présenté qui n'aurait pu l'être à l'audition du 2 avril 1918.

Je crois donc que dans la présente cause, ce serait aller au delà des limites de ce qui est raisonnable et convenable que d'accorder la demande de revision d'une décision en vigueur depuis si longtemps.

Je renverrais la requête.

Ottawa, le 18 janvier 1946.

J. A. STONEMAN.

J'agrée,

J. A. CROSS

HUGH WARDROPE

ORDER No. 66931

In the matter of the application of the County of Soulanges, in the Province of Quebec, under Section 51 of the Railway Act, for reconsideration of Board's Orders No. 24882, dated April 8th, 1916, No. 26734, dated November 12, 1917, and No. 27111, dated April 5, 1918; and for an Order rescinding, changing, altering or varying said Order No. 27111, which Order places the cost of the watchman of Vernier Crossing at Coteau Station upon the Grand Trunk Railway Company (now Canadian National Railways), the Corporation of the Village of Coteau Station and the Applicant Company; and re-establishing Order No. 26734, dated November 12, 1917, whereby no cost is placed upon the applicant County.

File 9437.1302

MONDAY, the 21st day of January, A.D., 1946.

J. A. CROSS, K.C., *Chief Commissioner.*
 HUGH WARDROPE, *Asst. Chief Commissioner.*
 J. A. STONEMAN, *Commissioner.*

Upon hearing the application at the sittings of the Board held at Montreal, Quebec, on November 13, 1945, in the presence of Counsel for and representatives of the County of Soulanges, Canadian National Railways, and Village of Coteau Station, and what was alleged—

It is ordered: That the application be, and it is hereby, dismissed.

J. A. CROSS,
Chief Commissioner.

ORDER No. 66920

In the matter of the application of the Canadian Pacific Railway Company for a licence under Section 10 of The Transport Act, 1938.

File No. 42076.24

FRIDAY, the 18th day of January, A.D., 1946.

J. A. CROSS, K.C., *Chief Commissioner.*
 HUGH WARDROPE, *Asst. Chief Commissioner.*
 J. A. STONEMAN, *Commissioner.*
 G. A. STONE, *Commissioner.*

Upon the report and recommendation of the Assistant Director, Traffic Department of the Board—

It is ordered: That Licence Number C.T.C. (W.T.) 129 be issued to the Canadian Pacific Railway Company for the period of one year commencing on the 15th day of January, 1946, licensing the following ships, namely:—

Vessel Name	Official Registry No.	Gross Tonnage
Assiniboia	125984	3,880
Keewatin	125985	3,856
Manitoba	94879	2,616

to transport passengers and/or goods by water between all ports or places in Canada on Lake Huron (including Georgian Bay) and Superior, and their connecting waters.

J. A. CROSS,
Chief Commissioner.

ORDER No. 66960

In the matter of Agreed Charge between the Canadian National Railways, Canadian Pacific Railway Company, Northern Alberta Railways Company and certain shippers covering transportation of lumber and forest products between stations in Western Canada specified therein, approved by Order No. 59787, dated October 18, 1940.

File No. 40994.13

MONDAY, the 28th day of January, A.D., 1946.

J. A. CROSS, K.C., *Chief Commissioner.*

HUGH WARDROPE, *Asst. Chief Commissioner.*

G. A. STONE, *Commissioner.*

Whereas The Swanson Lumber Co. Limited, of Edmonton, Alberta, has made application under subsection (6) of Section 35 of The Transport Act, 1938, and represented to the Board that its business will be unjustly discriminated against unless a similar charge be fixed for the transport of its lumber and forest products, and has expressed its willingness to meet and comply with the provisions and conditions of the said Agreed Charge—

It is ordered: That the agreed charges approved by the said Order No. 59787, dated October 18, 1940, be, and they are hereby, fixed for the transport by the said railways of lumber and forest products, as described in paragraph B of the said Agreed Charge, for The Swanson Lumber Co. Limited from the spur at Mileage 11.2 west of Edson, Alberta, on the Canadian National Railways' Brule Subdivision, to the stations referred to in paragraph C (2) of the said Agreed Charge, subject to and upon the terms and conditions contained in the said Agreed Charge; and the Board hereby appoints the date of this Order as the date on which the said charges fixed as aforesaid are to come into operation.

J. A. CROSS,
Chief Commissioner.

ACCIDENTS REPORTED TO THE OPERATING DEPARTMENT
BOARD OF TRANSPORT COMMISSIONERS FOR CANADA,
DECEMBER, 1945

Railway Accidents	174	Killed 19	Injured 221
Level Crossing Accidents	59	Killed 14	Injured 98

Totals.....	233	Killed 33	Injured 319
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	Killed	Injured
Passengers	—	44
Employees	5	164
Others	28	111
Totals.....	33	319

DETAILS OF ACCIDENTS AT HIGHWAY CROSSING

Accidents	K.	I.	NOVA SCOTIA
1	—	2	Automobile skidded into side of train. Licence N.S.42083.
1	—	5	Automobile drove onto crossing in front of approaching train and was struck. Licence N.S.88907.
1	—	1	Automobile drove onto crossing in front of approaching train and was struck. Licence N.S.50692.
1	—	1	Automobile drove onto crossing in front of approaching train and was struck. Licence N.S.22140.

NEW BRUNSWICK

1	—	4	Automobile struck by Track Motor Car. Licence N.B.3169.
1	1	—	Auto Truck drove onto crossing in front of approaching train and was struck. Licence not given.

QUEBEC

1	—	2	Automobile ran into side of train. Licence N.Y.1-P-1291.
1	—	1	Auto Truck ran into side of train. Licence Que.F-33502.
1	—	1	Automobile ran into side of train. Licence Que.T-7061.
1	—	3	Automobile drove onto crossing in front of approaching train and was struck. Licence Que.110-193.
1	1	2	Automobile ran into side of train. Licence Que.135-118.
1	—	6	Automobile ran into side of train. Licence Ont.18-Y-66.
1	1	1	Automobile ran into side of train. Licence Que.292.

ONTARIO

1	—	1	Automobile drove onto crossing in front of approaching train and was struck. Licence Ont.7-A-86.
1	—	1	Auto Truck drove onto crossing in front of approaching train and was struck. Licence Ont.6734-C.
1	—	2	Automobile ran into side of train. Licence Ont.385-Y-6.
1	—	2	Auto Bus drove onto crossing in front of approaching train and was struck. Licence Ont.2508-C-99.
1	—	3	Automobile ran into side of train. Licence Ont.70-X-2.
1	—	1	Automobile ran into side of train. Licence Ont.4-U-243.
1	—	4	Automobile ran into side of train. Licence Ont.632-T-5.
1	—	1	Automobile drove onto crossing in front of approaching train and was struck. Licence Ont.3-Z-479.
1	—	2	Automobile ran into side of train. Licence Ont.92-E-66.
1	—	1	Automobile drove onto crossing in front of approaching train and was struck. Licence Ont.92-Y-91.
1	1	1	Automobile drove onto crossing in front of approaching train and was struck. Licence not given.
1	—	2	Automobile drove onto crossing in front of approaching train and was struck. Licence Ont.302-D-7.
1	—	4	Automobile ran into side of train. Licence Ont.TJ-109.

Accidents K. I.

ONTARIO—*Concluded*

- | | | | |
|---|---|---|---|
| 1 | 2 | 1 | Automobile drove onto crossing in front of approaching train and was struck. Licence Ont.191-M-6. |
| 1 | — | 1 | Automobile drove onto crossing in front of approaching train and was struck. Licence Ont.48-F-30. |
| 1 | — | 1 | Automobile ran into side of train. Licence Ont.3-F-60. |
| 1 | 1 | — | Pedestrian walked onto crossing in front of approaching train and was struck. |
| 1 | — | 2 | Automobile drove onto crossing in front of approaching train and was struck. Licence Ont.625-K-3. |
| 1 | — | 1 | Auto Taxi drove onto crossing in front of approaching train and was struck. Licence Ont.69-K-2. |
| 1 | — | 1 | Automobile struck by Track Motor Car. Licence not given. |
| 1 | 1 | — | Automobile drove onto crossing in front of approaching train and was struck. Licence Ont.69-N-70. |
| 1 | 1 | — | Auto Truck drove onto crossing in front of approaching train and was struck. Licence not given. |
| 1 | 1 | 1 | Automobile drove onto crossing in front of approaching train and was struck. Licence not given. |
| 1 | — | 4 | Automobile ran into side of train. Licence Ont.979-S-05. |
| 1 | 1 | — | Auto Truck drove onto crossing in front of approaching train and was struck. Licence not given. |
| 1 | — | 2 | Auto Truck ran into side of train. Licence not given. |
| 1 | — | 1 | Automobile drove onto crossing in front of approaching train and was struck. Licence Ont.29-E-32. |
| 1 | — | 1 | Tractor struck by train. Licence Ont.5589-T. |
| 1 | — | 4 | Automobile drove onto crossing in front of approaching train and was struck. Licence Ont.964-E-8. |

MANITOBA

- | | | | |
|---|---|---|---|
| 1 | — | 1 | Auto Taxi ran into side of train. Licence Man.5251. |
| 1 | — | 3 | Automobile drove onto crossing in front of approaching train and was struck. Licence not given. |

SASKATCHEWAN

- | | | | |
|---|---|---|---|
| 1 | — | 1 | Automobile drove onto crossing in front of approaching train and was struck. Licence not given. |
| 1 | 2 | 2 | Auto Truck ran into side of train. Licence not given. |

ALBERTA

- | | | | |
|---|---|---|---|
| 1 | — | 1 | Auto Truck drove onto crossing in front of approaching train and was struck. Licence not given. |
| 1 | — | 1 | Automobile ran into side of train. Licence not given. |
| 1 | — | 2 | Automobile ran into side of train. Licence Alta.24-043. |
| 1 | — | 1 | Automobile drove onto crossing in front of approaching train and was struck. Licence not given. |

BRITISH COLUMBIA

- | | | | |
|---|---|---|--|
| 1 | — | 4 | Automobile ran into side of train. Licence not given. |
| 1 | — | 1 | Automobile drove onto crossing in front of approaching train and was struck. Licence B.C.36369. |
| 1 | — | 1 | Auto Truck drove onto crossing in front of approaching train and was struck. Licence B.C. C-940-H. |
| 1 | — | 1 | Pedestrian attempting to flag train with his coat held on a walking stick and was struck by train. |
| 1 | 1 | — | Auto Truck drove onto crossing in front of approaching train and was struck. Licence not given. |
| 1 | — | 1 | Auto Taxi ran into side of train. Licence not given. |
| 1 | — | 2 | Automobile drove onto crossing in front of approaching train and was struck. Licence not given. |
| 1 | — | 1 | Automobile ran into side of train. Licence B.C.25-925. |
| 1 | — | 1 | Auto Truck drove onto crossing in front of approaching train and was struck. Licence not given. |

Of the 59 accidents at Highway Crossings, 48 occurred at Unprotected Crossings and 11 at Protected Crossings. Thirty of the accidents occurred after Sunrise and twenty-nine after Sunset.

January 25, 1946.

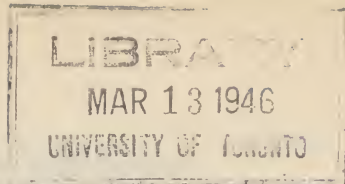
SUMMARY OF ORDERS ISSUED BY THE BOARD

- 66820 Jan. 18—Approving under Maritime Freight Rates Act tolls published in Tariff C.T.C. No. E.5052 and in Supplement No. 1 thereto, filed by the C.P.R. under Sec. 9.
- 66912 Jan. 16—Declaring Toronto, Hamilton & Buffalo Ry. crossing of King Street in the city of Hamilton, Ont., on the Belt Line Subd., protected to Board's satisfaction; present speed limitation of fifteen miles per hour to be maintained.
- 66913 Jan. 16—Declaring Northern Alberta Railways crossing of Second Street East in the Town of Grande Prairie, Alta., mileage 49·8 Grand Prairie Subd., protected to Board's satisfaction; present speed limitation of ten miles per hour to be maintained.
- 66914 Jan. 16—Declaring Northern Alberta Railways crossing of highway second west of Grande Prairie Station, Alta., mileage 50·12 Grande Prairie Subd., protected to Board's satisfaction; present speed limitation of ten miles per hour to be maintained.
- 66915 Jan. 16—Extending time within which the C.N.R. was required to install two flashing light signals and bell at crossing of highway east of Mallorytown Station, Ont.
- 66916 Jan. 16—Declaring C.N.R. crossing of St. Paul Street just east of station at St. Paul l'Ermite, Que., mileage 20·35 l'Assomption Subd., protected to Board's satisfaction.
- 66917 Jan. 17—Declaring C.N.R. crossing of Provincial Highway No. 53 first west of Rymal, Ont., on the Hagersville Subd., protected to Board's satisfaction.
- 66918 Jan. 17—Extending time within which C.P.R. was required to construct and complete two crossover tracks to serve The Ogilvie Flour Mills Co., Ltd., Fort William, Ont.
- 66919 Jan. 18—Declaring C.P.R. crossing of Raglan Street in the Town of Renfrew, Ont., on the Chalk River Subd., protected to Board's satisfaction; present speed limitation of ten miles per hour to be maintained.
- 66920 Jan. 18—Authorizing issuing of Licence No. C.T.C. (W.T.) 129 to Canadian Pacific Railway Company.
- 66921 Jan. 18—Approving location of pipe lines, etc., of Gas & Oil Products Limited near C.N.R. tracks at Edmonton, Alta.
- 66922 Jan. 18—Approving location of pipe lines, etc., of Imperial Oil Limited near C.P.R. tracks at Portreeve, Sask.
- 66923 Jan. 19—Declaring C.P.R. crossing of highway first west of Pense Station, Sask., mileage 109·31 Indian Head Subd., protected to Board's satisfaction.
- 66924 Jan. 21—Approving under Maritime Freight Rates Act tolls published in Tariff C.T.C. No. E.3919, filed by C.N.R. under Sec. 3.
- 66925 Jan. 21—Extending time within which Great Northern Railway Co. was required to construct and complete a branch line of railway to serve McLennan, McFeely & Prior Limited, Vancouver, B.C.
- 66926 Jan. 21—Declaring C.N.R. crossing of Provincial Highway No. 85 second south of St. Jacobs, Ont., mileage 5·82 Waterloo Subd., protected to Board's satisfaction.
- 66927 Jan. 21—Declaring C.N.R. crossing of James Street in the Town of Palmerston, Ont., at mileage 36·50 Newton Subd., protected to Board's satisfaction; present speed limitation of five miles per hour to be maintained.
- 66928 Jan. 21—Declaring C.N.R. crossing of Wellington Street in the City of Kitchener, Ont., on the Waterloo Subd., protected to Board's satisfaction; present speed limitation of ten miles per hour to be maintained.
- 66929 Jan. 21—Declaring C.N.R. crossing of Main Street, at Ferguson Ave., in the City of Hamilton, Ont., on Hagersville Subd., protected to Board's satisfaction; present speed limitation of ten miles per hour to be maintained.
- 66930 Jan. 21—Declaring C.N.R. crossing of Queen Street in the Village of Mount Forest, Ont., at mileage 10·69 Durham Subd. protected to Board's satisfaction.
- 66931 Jan. 21—Dismissing application of County of Soulanges, Que., for reconsideration of certain Orders of the Board, *re* Vernier Street crossing, Coteau Station, Que.
- 66932 Jan. 21—Approving service station contract, dated December 1, 1945, between the Bell Telephone Company of Canada and the Geneva Rural Telephone Association.

- 66933 Jan. 21—Authorizing Municipality of Arthur, Man., to construct highway crossing over tracks of the C.P.R. at mileage 64.5 Estevan Subd., Man.
- 66934 Jan. 21—Declaring New York Central Railroad crossing of highway in the Village of Hagersville, Ont., protected to Board's satisfaction.
- 66935 Jan. 21—Approving location of pipe lines, etc., of Imperial Oil Limited near C.P.R. tracks at Gull Lake, Sask.
- 66936 Jan. 22—Authorizing C.P.R. and Pere Marquette Railway Co. to operate their trains through interlocking plant at Walkerville Junction, Ont.
- 66937 Jan. 22—Declaring C.N.R. crossing of Highway No. 55 first east of Normandin Station, Que., mileage 41.92 Roberval Subd., protected to the Board's satisfaction.
- 66938 Jan. 23—Authorizing Corp. of the Village of Fonthill, Ont., to construct an extension of Emmett Avenue across tracks of the Niagara, St. Catharines & Toronto Railway, Village of Fonthill, Ont.
- 66939 Jan. 19—Authorizing C.N.R. to enter upon lands of Thomas Smith Estate in Lot 29, Division A of the Twp. of Guelph, Ont., at mileage 32.15 Fergus Subd., to remove bushes etc. from said lands, and to establish and maintain sight lines.
- 66940 Jan. 23—Approving location of C.N.R.'s standard No. 4A station at Heinsburg, Alta.
- 66941 Jan. 23—Declaring C.P.R. crossing of highway at mileage 2.97 Turin Subd., Alta., protected to Board's satisfaction.
- 66942 Jan. 23—Declaring C.N.R. crossing of Paisley Street, in the City of Guelph, Ont., mileage 30.40 Fergus Subd., protected to Board's satisfaction; present speed limitation of ten miles per hour to be maintained.
- 66943 Jan. 23—Authorizing City of Kitchener, Ont., to construct a public crossing over the Grand River Railway by extension of Church Street from Stirling Avenue to Kent Avenue, in the City of Kitchener, Ont.
- 66944 Jan. 23—Approving service station contract between the Bell Telephone Company of Canada and the Lachute Rural Telephone Association.
- 66945 Jan. 24—Authorizing C.N.R. to construct two sidings along and across Brant Avenue and across Ontario Street, in the Town of Burlington, Ont., to serve A. S. Nicholson and Son, Ltd.
- 66946 Jan. 23—Approving clearances at sidings serving Gypsum, Lime and Alabastine, Canada, Limited, at Caledonia, Ontario. (C.N.R.)
- 66947 Jan. 24—Declaring C.P.R. crossing of Third Street second south of Weyburn Station, Sask., mileage 84.5 Portal Subd., protected to the Board's satisfaction; present speed limitation of ten miles per hour to be maintained; and no cars be left standing within 75 feet of the crossing, on each side thereof.
- 66948 Jan. 25—Approving under Maritime Freight Rates Act tolls published in Item No. 1205 of 4th revised page 53 to Tariff C.T.C. No. E.4757, filed by the C.P.R. under Sec. 9.
- 66949 Jan. 25—Approving under Maritime Freight Rates Act tolls published in Item 3820A of Supplement No. 45 to Tariff C.T.C. No. 1312, filed by the Canadian Freight Association under Sec. 3.
- 66950 Jan. 25—Extending time within which C.P.R. was required to install two flashing lights and one bell at first crossing of the railway and highway east of station at Oak Lake, Man.
- 66951 Jan. 25—Authorizing C.N.R. to construct siding across Woolner Avenue, Twp. of York, Ont.
- 66952 Jan. 26—Approving location of pipe lines, etc., of Canadian Oil Companies Limited near C.N.R. tracks at Parry Sound, Ont.
- 66953 Jan. 26—Amending Order No. 12431, dated Sept. 26, 1910, which authorized C.P.R. to construct industrial spur in the City of Brandon, Man. (hours for switching).
- 66954 Jan. 28—Declaring C.N.R. crossing of highway second west of station at Ketchen, Sask., mileage 80.32 Preeceville Subd., protected to Board's satisfaction.
- 66955 Jan. 28—Declaring C.P.R. crossing of highway west of station shelter at Brown's Corners, Ont., mileage 85.92 Peterborough Subd., protected to Board's satisfaction.
- 66956 Jan. 28—Declaring C.P.R. crossing of highway west of station at Smiths Falls, Ont., at mileage 2.81 Belleville Subd., protected to Board's satisfaction.

- 66957 Jan. 28—Declaring C.N.R. crossing of Reid Street in the City of Peterborough, Ont., mileage 64·02 Campbellford Subd., protected to Board's satisfaction; present speed limitation of ten miles per hour to be maintained.
- 66958 Jan. 28—Declaring C.N.R. crossing of highway first west of Arborfield Station, Sask., mileage 19·4 Arborfield Subd., protected to Board's satisfaction.
- 66959 Jan. 28—Declaring C.N.R. crossing of Colborne Street in the Town of Lindsay, Ont., on the Haliburton Subd., protected to Board's satisfaction; present speed limitation of ten miles per hour to be maintained.
- 66960 Jan. 28—Fixing agreed charges for the transport by the C.N.R., C.P.R. & Northern Alberta Railways of lumber and forest products of The Swanson Lumber Co. Limited.
- 66961 Jan. 28—Approving Supplement No. 7, to service station contract between the Bell Telephone Company of Canada and the Byron Telephone Co., Limited.
- 66962 Jan. 28—Approving Supplemental Agreement to Agreement between the Bell Telephone Company of Canada and the New England Telephone and Telegraph Company.
- 66963 Jan. 28—Approving plan showing proposed concrete lining of C.N.Rys' tunnel at mileage 5·5 Yale Subd., B.C.

The first part of the paper is devoted to a general
 discussion of the problem. It is shown that the
 problem is of great importance in the theory of
 functions of a complex variable. The second part
 contains a detailed proof of the theorem. The third
 part is devoted to some applications of the theorem.
 The fourth part contains some remarks and
 references.



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The Board of Transport Commissioners for Canada

Judgments, Orders, Regulations and Rulings

Vol. XXXV

Ottawa, March 1, 1946

No. 23

This publication is issued fortnightly, on the first and 15th of each month. Annual subscription, \$3.00; single numbers, 20 cents; in quantities, 25 per cent discount. Remittances should be made to the King's Printer, Ottawa, by postal money order, express order or accepted cheque. The use of currency for this purpose is contrary to the advice of the postal authorities and entails a measure of risk. Postage stamps, foreign money or uncertified cheques will not be accepted. No extra charge is made for postage on documents forwarded to points in Canada and in the United States, but cost of postage is added to the selling price when documents are mailed to other countries. Early application should be made for copies in quantities. Subscriptions should be sent, in every case, to the King's Printer, Ottawa.

ORDER No. 66995

In the matter of the application of St. Lawrence Steamships Limited, hereinafter called the "Applicant," for a licence under Section 10 of The Transport Act, 1938:

File No. 42076.8

MONDAY, the 4th day of February, A.D. 1946.

J. A. CROSS, K.C., *Chief Commissioner.*

HUGH WARDROPE, *Asst. Chief Commissioner.*

J. A. STONEMAN, *Commissioner.*

G. A. STONE, *Commissioner.*

F. M. MACPHERSON, *Commissioner.*

Upon the report and recommendation of the Assistant Director, Traffic Department of the Board—

It is ordered: That Licence Number C.T.C. (W.T.) 130 be issued to the Applicant for the period of one year commencing on the 15th day of January, 1946, licensing the following ships, namely:

Vessel Name	Official Registry No.	Gross Tonnage
Algonquins	161515	2100
Sioux	161516	2100
Cheyenne	149498	1938

to transport goods by water between all ports or places in Canada on Lakes Ontario, Erie, Huron (including Georgian Bay), and Superior, and their connecting waters, including the St. Lawrence River and its tributaries as far seaward as the west end of the Island of Orleans.

J. A. CROSS,
Chief Commissioner.

ORDER No. 67028

In the matter of the application of Northwest Steamships Limited for a licence under Section 10 of The Transport Act, 1938.

File No. 42076.2

FRIDAY, the 15th day of February, A.D. 1946.

J. A. CROSS, K.C., *Chief Commissioner.*

HUGH WARDROPE, *Asst. Chief Commissioner.*

J. A. STONEMAN, *Commissioner.*

G. A. STONE, *Commissioner.*

Upon the recommendation of the Assistant Director, Traffic Department of the Board—

It is ordered: That Licence Number C.T.C. (W.T.) 131 be issued to Northwest Steamships Limited for the period of one year commencing on the 15th day of January, 1946, licencing the following ships:

<i>Vessel Name</i>	<i>Official Registry No.</i>	<i>Gross Tonnage</i>
<i>A. A. Hudson</i>	148089	2,222
<i>Superior</i>	154471	1,774

to transport goods by water between all ports or places in Canada on Lakes Ontario, Erie, Huron (including Georgian Bay), and Superior, and their connecting waters, including the St. Lawrence River and its tributaries as far seaward as the west end of the Island of Orleans.

J. A. CROSS,
Chief Commissioner.

SUMMARY OF ORDERS ISSUED BY THE BOARD

- 66964 Jan. 28—Authorizing C.N.R. to reconstruct bridge over Hunters Creek at mileage 46.9 Yale Subd., B.C.
- 66965 Jan. 26—Approving clearances at trackage serving the Dominion Rubber Company Ltd. at Kitchener, Ont. (C.N.R. & G.R.R.).
- 66966 Jan. 28—Approving plan showing proposed changes to interlocking plant at junction of the C.P.R. and the St. Lawrence and Adirondack Railway at Adirondack Junction, Que., mileage 40.66 Adirondack Subd.
- 66967 Jan. 28—Amending Order No. 66889, dated Jan. 7, 1946, granting leave to C.N.R. to construct siding across Burlington Street and The Hamilton Street Railway, City of Hamilton, Ont.
- 66968 Jan. 29—Declaring Dominion Atlantic Railway crossing of Main Street West in the Town of Kentville, N.S., at mileage 0.39 Kentville Subd., protected to Board's satisfaction; present speed limitation of ten miles per hour to be maintained.
- 66969 Jan. 29—Extending time within which the Dept. of Highways for the Province of Ontario are authorized to maintain temporary crossing at points immediately west of Selim Station, Ont.
- 66970 Jan. 29—Declaring C.P.R. crossing of King Street in the Village of Sturgeon Falls, Ont., on the Cartier Subd., protected to Board's satisfaction.
- 66971 Jan. 29—Declaring C.N.R. crossing of Muskoka Road in the Town of Gravenhurst, Ont., mileage 111.8 Newmarket Subd., protected to Board's satisfaction.
- 66972 Jan. 30—Authorizing Dept. of Public Works for the Province of N.B. to improve grade on the north side of crossing of Gault Road and the C.P.R. at South Bay, N.B., mileage 4.57 St. John Subd.
- 66973 Jan. 30—Authorizing C.P.R. to install two flashing light signals and one bell at crossing of its railway and Gault Road at South Bay, N.B., mileage 4.57 St. John Subd.
- 66974 Jan. 31—Approving location of pipe lines, etc., of McColl-Frontenac Oil Co. Limited near C.N.R. tracks at Humboldt, Sask.
- 66975 Jan. 30—Authorizing C.N.R. to install flashing light signals and automatic gates at crossing of Neebing Avenue, West Fort William, Ont.
- 66976 Jan. 31—Approving location of pipe lines, etc., of Imperial Oil Limited, near C.N.R. tracks at Edam, Sask.
- 66977 Feb. 1—Approving location of one additional horizontal storage tank of Canadian Oil Companies, Limited, near C.N.R. tracks at Chatham, Ont.
- 66978 Jan. 31—Approving location of pipe lines, etc., of Canadian Oil Companies, Limited, near C.P.R. tracks at Harriston, Ont.
- 66979 Jan. 31—Authorizing C.N.R. to install two flashing light signals and one bell at crossing just west of station at Nelles Corners, Ont., mileage 54.51 Cayuga, Subd.
- 66980 Feb. 1—Authorizing Twp. of York, Ont., to construct highway crossing over tracks of C.N.R. at Ronald Avenue, Twp. of York, Ontario.
- 66981 Feb. 1—Authorizing C.P.R. to construct extension to passing track at grade across North Queen Street, Twp. Lot 6, Concessions 3 and 4, Twp. of Etobicoke, County of York, Ont., at mileage 0.91 Mimico Cut-off.
- 66982 Feb. 1—Approving location of pipe lines, etc., of Shell Oil Company of Canada, Limited, near C.P.R. tracks at Victoria, B.C.
- 66983 Jan. 31—Declaring C.N.R. crossing of highway 2.44 miles west of Beaverton East Station, Ont., mileage 25.05 Midland Subd., protected to Board's satisfaction.
- 66984 Feb. 2—Approving location of pipe lines, etc., of North Star Oil Limited near C.N.R. tracks at Forestburg, Alta.
- 66985 Feb. 2—Approving location of pipe lines, etc., of Imperial Oil Limited, near C.N.R. tracks at Beatty, Sask.
- 66986 Feb. 2—Declaring C.P.R. crossing of highway at Canning, N.B., mileage 34.8 Minto Subd., protected to Board's satisfaction.
- 66987 Feb. 2—Declaring C.N.R. crossing of highway first west of Inverness Junction, N.B., mileage 0.46 Inverness Subd., protected to Board's satisfaction.
- 66988 Feb. 2—Declaring C.N.R. crossing of Highway No. 3 at Chester, N.S., mileage 50.35 Chester Subd., protected to Board's satisfaction.
- 66989 Feb. 4—Declaring C.P.R. crossing of highway at mileage 66.4 Cascade Subd. B.C., protected to Board's satisfaction.

- 66990 Feb. 4—Approving Traffic Agreement between the Bell Telephone Company and the C.P.R. covering interchange of traffic over the Sudbury-Little Current Telephone line; also Traffic Agreement between the Bell Telephone Company and the C.P.R. covering interchange of traffic over the Sudbury-Creighton Mine telephone line.
- 66991 Feb. 4—Declaring C.N.R. crossing first just east of Riversdale Station, N.S., mileage 12·67 Mulgrave Subd., protected to Board's satisfaction.
- 66992 Feb. 4—Declaring C.P.R. crossing of St. Patrick Street in the Town of LaSalle, Que., mileage 4·31 LaSalle Loop Line Subd., protected to Board's satisfaction; present speed limitation of ten miles per hour to be maintained, all trains and switching movements to be flagged by a member of the crew.
- 66993 Feb. 4—Declaring C.P.R. crossing of highway at mileage 15·0 Cranbrook Subd., B.C. protected to Board's satisfaction.
- 66994 Feb. 4—Declaring C.N.R. crossing of Smith Street in the City of Fredericton, N.B., mileage 70·34 Centreville Subd., protected to Board's satisfaction; present speed limitation of ten miles per hour to be maintained.
- 66995 Feb. 4—Authorizing issuing of Licence No. C.T.C. (W.T.) 130 to St. Lawrence Steamships Limited.
- 66996 Feb. 5—Declaring C.P.R. crossing of highway 2·23 miles east of Jeannette, Ont., mileage 73·76 Windsor Subd., protected to Board's satisfaction.
- 66997 Feb. 5—Declaring C.P.R. crossing of highway 1·38 miles east of Komoka, Ont., mileage 9·12 Windsor Subd., protected to Board's satisfaction.
- 66998 Feb. 5—Declaring C.P.R. crossing of Lauzon Road, 3·4 miles east of Walkerville Junction, Ont., mileage 104·71 Windsor Subd., protected to Board's satisfaction.
- 66999 Feb. 5—Declaring C.P.R. crossing of King Street first west of station at Virden, Man., mileage 47·4 Broadview Subd., protected to Board's satisfaction.
- 67000 Feb. 6—Approving under Maritime Freight Rates Act tolls published in Tariff C.T.C. No. E.3919, filed by the C.N.R. under Sec. 3.
- 67001 Feb. 6—Declaring C.N.R. crossing of 13th Street in the City of Brandon, Man., mileage 0·6 Cromer Subd., protected to Board's satisfaction; present speed limitation of ten miles per hour to be maintained.
- 67002 Feb. 6—Declaring Vancouver & Lulu Island Railway crossing of Broadway Avenue, Vancouver, B.C., protected to Board's satisfaction; all trains required to come to a stop before passing over crossing.
- 67003 Feb. 6—Declaring Esquimalt & Nanaimo Railway crossing first east of the station at Wellington, B.C., mileage 77·3 Victoria Subd., protected to Board's satisfaction.
- 67004 Feb. 6—Relieving the United Gas & Fuel Co. of Hamilton, Limited, from complying with the direction contained in paragraph 3 of Order No. 66709 to remove its facilities therein referred to until the 15th day of May, 1946.
- 67005 Feb. 6—Declaring C.N.R. crossing of Beach Road, Hamilton, Ont., on the Beach Line, Grimsby Subd., protected to Board's satisfaction; present speed limitation of five miles per hour to be maintained.
- 67006 Feb. 6—Declaring C.N.R. crossing of Welland Street in the Town of Port Colborne, Ont., mileage 18·92 Dunnville Subdivision, protected to Board's satisfaction; present speed limitation of ten miles per hour to be maintained.
- 67007 Feb. 6—Extending time within which C.N.R. were required to install two flashing light signals and one bell at crossing of Haig Boulevard, in the Twp. of Toronto, Ont., 10·53 Oakville Subd.
- 67008 Feb. 7—Authorizing the Municipal District of Lamont No. 82, Alta., to construct east and west road allowance between SE $\frac{1}{4}$ of Sec. 16 and the NE $\frac{1}{4}$ of Sec. 9, Twp. 55, Rge. 19, W.4M., across the Vegreville Subd., at mileage 90·94. (C.N.R.).
- 67009 Feb. 8—Declaring C.N.R. crossing of Cemetery Road second east of Grimsby, Ont., mileage 26·79 Grimsby Subd., protected to Board's satisfaction.
- 67010 Feb. 8—Amending Order No. 58593, dated January 24, 1940, approving protection by flagman at crossing of Young Street and C.N.R. in Town of Truro, N.S.
- 67011 Feb. 8—Declaring C.N.R. crossing of Young Street first west of station at Truro, N.S., mileage 63·82 Bedford Subd., protected to Board's satisfaction.
- 67012 Feb. 8—Declaring Vancouver & Lulu Island Railway crossing of Borden Avenue in the City of Vancouver, B.C., District No. 2, Westminster Subd., protected to Board's satisfaction.

- 67013 Feb. 8—Declaring Nipissing Central Railway crossing of highway west of the station at Kirkland Lake, Ont., mileage 5.41 Kirkland Lake Subd., protected to Board's satisfaction.
- 67014 Feb. 11—Declaring C.P.R. crossing at Logan Avenue in the City of Winnipeg, Man., Winnipeg Terminal Subd., protected to Board's satisfaction; present speed limitation of ten miles per hour to be maintained; all movements approaching crossing to be brought to a stop and flagged over crossing.
- 67015 Feb. 11—Declaring C.P.R. crossing of highway second east of station at Louiseville, Que., mileage 62.08 Trois Rivières Subd., protected to Board's satisfaction.
- 67016 Feb. 11—Approving under Maritime Freight Rates Act tolls published in Supplement No. 31 to Tariff C.T.C. No. E.3269 and Supplement No. 69 to Tariff C.T.C. No. E3762 filed by the C.N.R. under Sec. 3.
- 67017 Feb. 11—Declaring C.N.R. crossing of Argyle Street first east of station at Caledonia, Ont., protected to Board's satisfaction; present speed limitation of ten miles per hour to be maintained; train crews to flag movements on sidings over said crossing.
- 67018 Feb. 12—Authorizing C.N.R. to construct wye track across Provincial Highway No. 14 at Cantic, Parish of Lacolle, Que.
- 67019 Feb. 12—Approving the agreement as to definition of "overseas message toll telephone service" from The Pacific Telephone and Telegraph Company to the British Columbia Telephone Company.

NOTICES, ORDERS IN COUNCIL, ETC.

The following Order in Council and Proclamation are reproduced for the information of all concerned:

Certified to be a true copy of a Minute of a Meeting of the Committee of the Privy Council, approved by His Excellency the Governor General on the 24th January, 1946.

The Committee of the Privy Council have had before them a report dated 23rd January, 1946, from the Acting Minister of Transport, representing that Section 12 (1) of The Transport Act, 1938, being Chapter 53 of the Statutes of Canada, 1938, provides that Part II of the said Act, relative to Transport by water, shall not come into force with respect to any sea or inland water of Canada until proclaimed by the Governor in Council to be in force with respect thereto; and

That, by Chapter 32 of the Statutes of Canada, 1945, The Transport Act, 1938, was amended to extend the application of the aforesaid Part II to water carriers operating vessels exceeding ten tons, gross tonnage, on the Mackenzie River, as defined in the amending Act.

The Committee, therefore, on the recommendation of the Acting Minister of Transport, advise that Part II of The Transport Act, 1938, as amended, be brought into force in respect of the Mackenzie River, as defined in the Act, and that a proclamation do issue accordingly.

A. D. P. HEENEY,
Clerk of the Privy Council.

T. RINFRET,
Deputy Governor General
(L.S.)

CANADA

GEORGE THE SIXTH, by the Grace of God, of Great Britain, Ireland and the British Dominions Beyond the Seas KING, Defender of the Faith, Emperor of India;

To ALL TO WHOM these Presents shall come or whom the same may in anywise concern,

GREETING:

A PROCLAMATION

F. P. VARCOE, Deputy Minister of Justice, Canada } WHEREAS in and by Section Twelve of the Transport Act 1938, being Chapter fifty-three of the Statutes of Canada 1938, as amended by Chapter thirty-two of the Statutes of Canada 1945, it is provided that Part II of the said Act, relative to Transport by Water, shall not come into force on, or in respect of, any sea or inland water of Canada until proclaimed by Our Governor in Council to be in force on, or in respect of, such sea or inland water.

AND WHEREAS it is expedient and Our Privy Council has advised that a Proclamation do issue bringing Part II of the said Act, as amended, into force, in respect of the Mackenzie River, as defined in subsection (1) (*hh*) of Section two of the said Act, as enacted by Chapter thirty-two of the Statutes of Canada 1945.

NOW KNOW YE that we by and with the advice of Our Privy Council for Canada do by this Our Proclamation declare and direct that Part II of the said Act, as amended, shall come into force, in respect of the Mackenzie River, as defined in subsection (1) (*hh*) of Section two of the said Act, as enacted by Chapter thirty-two of the Statutes of Canada 1945, and have effect, upon, from and after the date of publication of this Our Proclamation in the *Canada Gazette*.

OF ALL WHICH Our Loving Subjects and all others whom these Presents may concern are hereby required to take notice and to govern themselves accordingly.

IN TESTIMONY WHEREOF We have caused these Our Letters to be made Patent and the Great Seal of Canada to be hereunto affixed. WITNESS: Our Right Trusty and Well-beloved Counsellor the Honourable THIBAUDEAU RINFRET, Chief Justice of Canada and Deputy of Our Dear Uncle, Our Right Trusty and Right Well-beloved Cousin and Counsellor, Alexander Augustus Frederick George, Earl of Athlone, Knight of Our Most Noble Order of the Garter, a Member of Our Most Honourable Privy Council, Knight Grand Cross of Our Most Honourable Order of the Bath, Grand Master of Our Most Distinguished Order of Saint Michael and Saint George, Knight Grand Cross of Our Royal Victorian Order, Companion of Our Distinguished Service Order, Colonel in Our Army (retired), having the honorary rank of Major-General, one of Our Personal Aides-de-Camp, Governor General and Commander-in-Chief of Our Dominion of Canada.

AT OUR GOVERNMENT HOUSE, in Our City of Ottawa, this twenty-fourth day of January, in the year of Our Lord one thousand nine hundred and forty-six and in the Tenth year of Our Reign.

By Command,

E. H. COLEMAN,
Under Secretary of State.

1. 10. 1911

1. 10. 1911

(L)

1. 10. 1911

The following is a list of the names of the persons who have been elected to the office of the President of the Society for the year 1911-1912.

The names of the persons who have been elected to the office of the President of the Society for the year 1911-1912 are as follows:

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The Board of Transport Commissioners for Canada

Judgments, Orders, Regulations and Rulings

Vol. XXXV

Ottawa, March 15, 1946

No. 24

This publication is issued fortnightly, on the 1st and 15th of each month. Annual subscription, \$3.00; single numbers, 20 cents; in quantities, 25 per cent discount. Remittances should be made to the King's Printer, Ottawa, by postal money order, express order or accepted cheque. The use of currency for this purpose is contrary to the advice of the postal authorities and entails a measure of risk. Postage stamps, foreign money or uncertified cheques will not be accepted. No extra charge is made for postage on documents forwarded to points in Canada and in the United States, but cost of postage is added to the selling price when documents are mailed to other countries. Early application should be made for copies in quantities. Subscriptions should be sent, in every case, to the King's Printer, Ottawa.

ORDER No. 67057

In the matter of the application of The Niagara, St. Catharines & Toronto Railway Company, hereinafter called the "Applicant," for a licence under Section 10 of The Transport Act, 1938.

File No. 42076.10

MONDAY, THE 25th DAY OF FEBRUARY, A.D. 1946

J. A. CROSS, K.C., *Chief Commissioner.*

HUGH WARDROPE, *Asst. Chief Commissioner.*

G. A. STONE, *Commissioner.*

F. M. MACPHERSON, *Commissioner.*

Upon the report and recommendation of the Assistant Director of the Traffic Department of the Board—

It is ordered: That Licence Number C.T.C. (W.T.) 132 be issued to the Applicant for the period of one year commencing on the 15th day of January, 1946, licensing the following ships:

Vessel Name	Official Registry No.	Gross Tonnage
<i>Dalhousie City</i>	130312	1,256
<i>Northumberland</i>	96937	1,255

to transport passengers and/or goods by water between all ports or places in Canada on Lake Ontario.

J. A. CROSS,
Chief Commissioner.

GENERAL ORDER No. 680

In the matter of General Order of the Board No. 676, dated November 29, 1945;

File No. 27214.20

SATURDAY, the 16th day of February, A.D., 1946.

J. A. CROSS, K.C., *Chief Commissioner.*

HUGH WARDROPE, *Assistant Chief Commissioner.*

A. SYLVESTRE, K.C., *Deputy Chief Commissioner,*

J. A. STONEMAN, *Commissioner.*

G. A. STONE, *Commissioner.*

It is ordered that General Order No. 676, dated the 29th day of November, 1945, be, and it is hereby amended by striking out paragraph numbered 15 thereof.

J. A. CROSS,
Chief Commissioner,

ACCIDENTS REPORTED TO THE OPERATING DEPARTMENT BOARD OF TRANSPORT COMMISSIONERS FOR CANADA, JANUARY, 1946

Railway Accidents	148	Killed	17	Injured	149
Level Crossing Accidents.....	35	Killed	5	Injured	49

Total	183	Killed	22	Injured	198
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	Killed	Injured
Passengers	—	11
Employees	10	140
Others	12	47
Totals	22	198

DETAILS OF ACCIDENTS AT HIGHWAY CROSSINGS

Accidents	K.	I.	
NOVA SCOTIA			
1	1	1	Auto truck drove onto crossing in front of approaching train and was struck. Licence N.S.C-191-55.
1	—	2	Automobile ran into side of train. Licence N.S.73841.
NEW BRUNSWICK			
1	—	1	Auto truck drove onto crossing in front of approaching train and was struck. Licence N.B.4938.
QUEBEC			
1	—	3	Automobile drove onto crossing in front of approaching train and was struck. Licence Que.96749.
1	—	2	Auto Taxi drove onto crossing and struck Track Motor Car. Licence Que.T-4943.
1	—	2	Auto truck drove onto crossing in front of approaching train and was struck. Licence Que.F-27479.
1	—	1	Automobile drove onto crossing in front of approaching train and was struck. Licence Que.X-400.
1	1	1	Horse-drawn sleigh drove onto crossing and struck by train.
1	—	3	Automobile drove onto crossing in front of approaching train and was struck. Licence Que.102657.
ONTARIO			
1	—	1	Auto truck ran into side of train. Licence Ont.27360-C.
1	—	1	Automobile drove onto crossing in front of approaching train and was struck. Licence Ont.6-X-249.
1	—	1	Automobile drove onto crossing in front of approaching train and was struck. Licence Ont.565-V-6.
1	—	1	Automobile drove onto crossing in front of approaching train and was struck. Licence Ont.548-Z-6.
1	—	1	Automobile drove onto crossing in front of approaching train and was struck. Licence not given.
1	—	1	Automobile ran into side of train. Licence Ont.94-P-40.
1	—	1	Auto Bus struck Track Motor Car. No licence given.
1	—	1	Automobile drove onto crossing in front of approaching train and was struck. Licence Ont. 53-V-30.
1	—	1	Auto truck drove onto crossing in front of approaching train and was struck. Licence Ont.32277-C.
1	1	1	Automobile drove onto crossing in front of approaching train and was struck. Licence Mich.CJ-76-41.
1	—	2	Automobile drove onto crossing in front of approaching train and was struck. Licence Ont.960-H-6.
1	—	1	Automobile drove onto crossing in front of approaching train and was struck. Licence Ont.427-44-C.
1	—	1	Automobile drove onto crossing in front of approaching train and was struck. Licence Ont.34602-C.
1	—	1	Automobile ran into side of train. Licence Ont.128-N-5.

DETAILS OF ACCIDENTS AT HIGHWAY CROSSINGS—*Concluded*

Accidents K. I.

MANITOBA

- | | | | |
|---|---|---|--|
| 1 | — | 1 | Automobile ran into side of train. Licence Man.67-337. |
| 1 | — | 2 | Automobile ran into side of train. Licence not given. |

SASKATCHEWAN

- | | | | |
|---|---|---|--|
| 1 | — | 1 | Automobile ran into side of train. Licence Sask.86-348. |
| 1 | 1 | — | Auto truck drove onto crossing in front of approaching train and was struck. Licence Sask.F-7-690. |
| 1 | — | 7 | Track Motor car collided with automobile. Licence Sask.C-7963. |
| 1 | — | 1 | Automobile drove onto crossing in front of approaching train and was struck. Licence Sask.97-905. |
| 1 | 1 | — | Truck drove onto crossing in front of approaching train and was struck. Licence Sask.E-71. |
| 1 | — | 1 | Auto Truck ran into side of train. Licence Sask.C-822. |
| 1 | — | 1 | Track Motor Car collided with truck on crossing. Licence not given. |

ALBERTA

- | | | | |
|---|---|---|--|
| 1 | — | 1 | Horse bolted and rider was thrown to ground. |
| 1 | — | 2 | Automobile ran into side of train. Licence Alta.77512. |

BRITISH COLUMBIA

- | | | | |
|---|---|---|--|
| 1 | — | 1 | Automobile ran into side of train. Licence B.C.44-667. |
|---|---|---|--|

Of the 35 accidents at Highway Crossings, 32 occurred at Unprotected Crossings and 3 at Protected Crossings. Sixteen of the accidents occurred after Sunrise and nineteen after Sunset.

March 1st, 1946.

SUMMARY OF ORDERS ISSUED BY THE BOARD

- 67020 Feb. 13—Declaring Grand River Railway crossing of Samuelson Street in the City of Galt, Ont., protected to Board's satisfaction; present speed limitation of ten miles per hour to be maintained.
- 67021 Feb. 13—Declaring Grand River Railway crossing of Hespeler Road in the City of Galt, Ont., protected to Board's satisfaction; present speed limitation of ten miles per hour to be maintained.
- 67022 Feb. 13—Authorizing C.N.R. to reconstruct bridge over 12-Mile Creek at mileage 11.2 Grimsby Subd., Province of Ont.
- 67023 Feb. 13—Approving clearances of two conveyors and building located at siding serving Canadian Gypsum Company Limited, mileage 4.57 MacTier Subd. in Lot 8, Con. 5 west of Yonge Street, Twp. of York, County of York, Ont. (C.P.R.)
- 67024 Feb. 15—Approving Supplementary Agreement between the Bell Telephone Company of Canada and the Canadian Marconi Company, covering ship-to-shore radio telephone service, via Toronto.
- 67025 Feb. 15—Approving Supplementary Agreement between the Bell Telephone Company of Canada and the Canadian Marconi Company.
- 67026 Feb. 14—Authorizing the C.N.R. to appoint and maintain a station agent at St. Louis, Sask.
- 67027 Feb. 16—Authorizing the C.N.R. to operate their trains through the interlocking plant and connection with their Bout de l'Île line at Eastern Junction, Que.
- 67028 Feb. 15—Authorizing issuing of Licence No. C.T.C. (W.T.) 131 to Northwest Steamships Limited.
- 67029 Feb. 18—Approving under Maritime Freight Rates Act tolls published in Tariff C.T.C. No. E.3920 filed by the C.N.R. under Sec. 3.
- 67030 Feb. 16—Declaring C.P.R. crossing of highway at mileage 58.46 Leduc Subd., Alta., protected to Board's satisfaction.
- 67031 Feb. 16—Authorizing Dept. of Highways & Transportation Province of Sask. to construct Highway No. 44 across C.P.R. by means of a subway at mileage 8.3 Matador Subd., SE $\frac{1}{4}$ of Sec. 16, Twp. 26, Rge. 16, W. 3M.
- 67032 Feb. 18—Authorizing C.N.R. to construct siding across York Street, City of London, Ont., to serve Kellogg Company of Canada Limited.
- 67033 Feb. 18—Declaring C.N.R. crossing of highway at mileage 4.16 Bolney Subd., Sask. protected to Board's satisfaction.
- 67034 Feb. 18—Authorizing The Toronto, Hamilton & Buffalo Railway Co. to operate under highway bridge carrying line of Chatham Street, Hamilton, Ont., over tracks of its Waterford Subd.
- 67035 Feb. 19—Authorizing New York Central Railroad and C.N.R. to operate their trains through interlocking plant at Hagersville, Ont.
- 67036 Feb. 19—Authorizing the C.N.R. to operate their trains over crossing of Catarauqui Street, City of Kingston, Ont., at a rate of speed not exceeding five miles an hour.
- 67037 Feb. 19—Declaring C.P.R. crossing of Catarauqui Street in the City of Kingston, Ont., mileage 102.60 Kingston Subd., protected to the Board's satisfaction; speed limitation of five miles per hour to be maintained at the crossing.
- 67038 Feb. 19—Authorizing C.N.R. to construct spur across First Avenue and the lane in Block 178, Town of Edson, Alta., to serve Nigro and Anselmo Limited.
- 67039 Feb. 19—Authorizing C.P.R. and C.N.R. to operate their trains through interlocking plant near Chatham, Ont., mileage 65.15 Windsor Subd.
- 67040 Feb. 19—Declaring C.N.R. crossing of highway first east of Tisdale Station, Sask., mileage 72.71 Tisdale Subd., protected to Board's satisfaction; present speed limitation of ten miles per hour to be maintained.
- 67041 Feb. 20—Declaring New York Central Railroad crossing of Ellis Road about two miles west of Essex, Ont., mileage 212.23 main line, protected to Board's satisfaction.
- 67042 Feb. 20—Declaring C.P.R. crossing of Quebec Street in the City of London, Ont., mileage 113.03 Galt Subd., protected to Board's satisfaction; existing protection by watchmen and speed limitation of fifteen miles per hour to be maintained.
- 67043 Feb. 20—Declaring C.P.R. crossing of 14th Street in the City of Prince Albert, Sask., protected to Board's satisfaction.

- 67044 Feb. 20—Declaring C.N.R. crossing of highway first west of Laura Station, Sask., mileage 31·25 Rosetown Subd., protected to Board's satisfaction.
- 67045 Feb. 20—Declaring C.N.R. crossing of 104th Avenue and 104½ Street City of Edmonton, Alta., protected to Board's satisfaction; present speed limitation of ten miles per hour to be maintained and all engine and car movements over crossing to be protected by flagman.
- 67046 Feb. 20—Authorizing that cost of maintenance of crossing of Highway No. 7 and C.N.R. (Landsdowne Street) in the City of Peterborough, Ont., be borne and paid by the City of Peterborough.
- 67047 Feb. 21—Declaring Niagara, St. Catharines & Toronto Ry. crossing of Eastchester Ave., St. Catharines, Ont., protected to Board's satisfaction; present speed limitation of ten miles per hour to be maintained.
- 67048 Feb. 21—Authorizing C.P.R. to install flashing light signals and bell at crossing of the Kamloops-Tranquille Highway and the railway at Mile 1·076 west of Kamloops, B.C.
- 67049 Feb. 22—Authorizing C.P.R. to operate its trains over crossing of Dennis Street, Gladstone, Man., at a rate of speed not exceeding ten miles per hour.
- 67050 Feb. 22—Declaring C.N.R. crossing of 108th Avenue in the City of Edmonton, Alta., protected to Board's satisfaction; present speed limitation of ten miles per hour to be maintained.
- 67051 Feb. 23—Approving Supplement No. 3 to agreement between the Bell Telephone Company of Canada and The Commissioners for the Telephone System of the Municipality of the Twp. of Cumberland.
- 67052 Feb. 23—Approving Traffic Agreement between the Bell Telephone Company of Canada and James E. Dunfield, Proprietor, Dunfield Electric.
- 67053 Feb. 23—Declaring C.P.R. crossing of Carling Avenue in the City of Ottawa, Ont., mileage 1·34 Prescott Subdivision, protected to Board's satisfaction.
- 67054 Feb. 23—Declaring C.P.R. crossing of Russell Road in the Twp. of Gloucester, Ont., at mileage 85·93 Montreal-Ottawa Subd., protected to Board's satisfaction.
- 67055 Feb. 23—Authorizing C.N.R. to divert the road in the SW¼ of Sec. 4, Twp. 39, Rge. 2, W.3M. and construct highway crossing between SW¼ of Sec. 4 and SE¼ of Sec. 5, Twp. 39, Rge. 2, W.3M., in Province of Sask.
- 67056 Feb. 25—Approving under Maritime Freight Rates Act tolls published in tariffs filed by the C.N.R. under Sec. 3.
- 67057 Feb. 25—Authorizing issuing of Licence C.T.C. (W.T.) 132 to The Niagara, St. Catharines & Toronto Railway Co.
- 67058 Feb. 25—Declaring C.P.R. crossing of highway just south of station at Beeton, Ont., mileage 38·90 MacTier Subd., protected to Board's satisfaction.
- 67059 Feb. 25—Declaring C.N.R. crossing of Main Street in Town of Richmond, Ont., mileage 87·15 Danville Subd. protected to Board's satisfaction; present speed limitation of ten miles per hour to be maintained.

RE DEMURRAGE PENALTIES ASSESSED BY THE CANADIAN DEMURRAGE BUREAU UNDER GENERAL ORDERS 201 AND 349

The following tables present in a summarized form the reports of The Canadian Car Demurrage Bureau covering car demurrage assessed for the year 1945.

NOTE:—First two days over free time \$1 per day, three days or more \$5 per day.

EASTERN CANADA

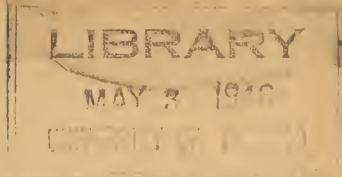
1945	Total cars handled	Number released within free time	Per cent	Number held over free time	Per cent	Number held under 3 days over free time	Per cent	Number held 3 days or more over free time	Per cent
JANUARY.....	231,548	204,934	88.51	26,614	11.49	17,428	7.52	9,186	3.97
FEBRUARY.....	238,220	214,477	90.03	23,743	9.97	16,403	6.89	7,340	3.08
MARCH.....	285,329	256,939	90.05	28,390	9.95	20,106	7.05	8,284	2.90
APRIL.....	264,443	237,007	89.62	27,436	10.38	19,535	7.39	7,901	2.99
MAY.....	272,393	243,604	89.43	28,789	10.57	20,787	7.63	8,002	2.94
JUNE.....	269,671	242,413	89.89	27,258	10.11	20,051	7.44	7,207	2.67
JULY.....	263,920	235,774	89.34	28,146	10.66	20,005	7.58	8,141	3.08
AUGUST.....	275,547	246,956	89.62	28,591	10.38	20,310	7.37	8,281	3.01
SEPTEMBER.....	262,103	235,814	89.97	26,289	10.03	18,969	7.24	7,320	2.79
OCTOBER.....	281,193	253,516	90.15	27,677	9.85	19,954	7.10	7,723	2.75
NOVEMBER.....	267,300	238,542	89.24	28,758	10.76	21,246	7.95	7,512	2.81
DECEMBER.....	249,322	221,541	88.86	27,781	11.14	20,406	8.18	7,375	2.96
TOTAL.....	3,160,989	2,831,517	.....	329,472	.....	235,200	.....	94,272	.....
MONTHLY AVERAGE...	263,416	235,960	89.58	27,456	10.42	19,600	7.44	7,856	2.98

WESTERN CANADA

JANUARY.....	114,728	107,282	93.51	7,446	6.49	5,634	4.91	1,812	1.58
FEBRUARY.....	104,880	97,412	92.88	7,468	7.12	5,424	5.17	2,044	1.95
MARCH.....	104,037	96,671	92.92	7,366	7.08	6,135	5.90	1,231	1.18
APRIL.....	104,981	98,986	94.29	5,995	5.71	4,854	4.62	1,141	1.09
MAY.....	116,251	109,613	94.29	6,638	5.71	4,978	4.28	1,660	1.43
JUNE.....	123,438	116,513	94.39	6,925	5.61	5,532	4.48	1,393	1.13
JULY.....	117,265	110,229	94.00	7,036	6.00	5,418	4.62	1,618	1.38
AUGUST.....	117,473	110,013	93.65	7,460	6.35	5,605	4.77	1,855	1.58
SEPTEMBER.....	118,753	111,152	93.60	7,602	6.40	5,909	4.97	1,693	1.43
OCTOBER.....	147,945	140,103	94.70	7,842	5.30	6,048	4.09	1,794	1.21
NOVEMBER.....	140,525	132,529	94.31	7,996	5.69	6,412	4.56	1,584	1.13
DECEMBER.....	119,129	111,623	93.70	7,506	6.30	5,871	4.93	1,635	1.37
TOTAL.....	1,429,405	1,342,126	.....	87,280	.....	67,820	.....	19,460	.....
MONTHLY AVERAGE...	119,117	111,844	93.89	7,273	6.11	5,652	4.74	1,622	1.37

P. F. BAILLARGEON,
Secretary, B.T.C.

OTTAWA, February 23, 1946.



THE BOARD OF
TRANSPORT COMMISSIONERS FOR CANADA

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OF

JUDGMENTS, ORDERS, REGULATIONS AND RULINGS
OF THE BOARD OF TRANSPORT COMMISSIONERS
FOR CANADA

FROM APRIL 1, 1945, TO MARCH 31, 1946

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